IN THE HON'BLE HIGH COURT OF JUDICATURE OF BOMBAY AT PORVORIM, GOA.

Civil Review Application No._____/2023

***In* Contempt Petition No.2/2020**

***in* P.I.L. W.P. No.26/2017**

The Goa Foundation **….APPLICANT**

v/s.

Shri Parimal Rai & Ors **...RESPONDENTS**

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PLACE: Porvorim, Goa

DATE: 13.06.2023

ADVOCATE FOR THE APPLICANT

IN THE HON'BLE HIGH COURT OF JUDICATURE OF BOMBAY AT PORVORIM, GOA.

Civil Review Application No._____/2023

in

Contempt Petition No.2/2020

***in* P.I.L. W.P. No.26/2017**

The Goa Foundation **….APPLICANT**

v/s.

Shri Parimal Rai & Ors **...RESPONDENTS**

SYNOPSIS AND CHRONOLOGY OF DATES AND EVENTS.

The instant application has been preferred seeking partial review of the judgment and order dt. 30.09.2022 passed by this Hon'ble Court in C.P. 2/2020 in PIL W.P. No.26/2017. The review is sought specifically of paragraphs 36 and 37 of the order, which pertain to the certain observations against the Applicant and the imposition of costs of Rs. 50,000. The applicant had filed a Special Leave Petition (SLP) with the Hon'ble Supreme Court against the said order dt.

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30.09.2022, and the Hon'ble Supreme Court granted the applicant the liberty to approach this Hon'ble Court with regards to the issue of waiver of costs. The Applicant respectfully submits that there are numerous reasonable grounds for this Hon'ble Court to consider a review of the costs imposed on the Applicant, and certain observations made against it. The Applicant has been pursuing this matter for more than 28 years in public interest, and received favorable orders from this Court in both earlier Writ Petitions (P.I.L. W.P. 26/2017 and W.P. 333/1993). At the time of the Contempt petition being filed in 2020, all three of the offending structures as per the NCSCM Report were still standing, and two of the three structures came to be removed pursuant to orders passed by this Court in the C.P. 2/2020. The Govt. officials who were party Respondents in the C.P. were enjoined as they were either Original Respondents in P.I.L. W.P. 26/2017, or as they had been explicitly added on due to orders of this Court to ensure compliance. It is submitted that the heavy penalty imposed on the Applicant was unjust and without considering the persistent efforts of this Applicant for almost 3 decades in ensuring the protections and restoration of the public beach area. The penalty was imposed on the Applicant without the Applicant being put to notice of the Court's intent to impose such heavy costs, and without the Applicant being given an opportunity to deal with the same. For all these reasons, and due to the fact that the observations cast an unwarranted blemish on the conduct of the applicant which is unjust, the instant Review Application has been preferred.

CHRONOLOGY OF DATES AND EVENTS

Sr. No	Date	Particulars of events or documents if any	Annexure and Page
1.	1993	Original writ petition challenging the approval granted to erect a hotel on Gaspar Dias beach at Miramar was filed.	
2.	29.06.2015	Judgment in W.P. 333/1993 was passed by this Hon'ble High Court, allowing the contentions of the petitioner.	
3.	24.08.2018	This Hon'ble High Court allowed P.I.L. W.P. 26/2017, directing the NCSCM to visit the site, demarcate the HTL and the imaginary line parallel to it, and identify offending structures.	
4.	11.01.2019	The Hon'ble Supreme Court by its order rejected the SLP filed by the Respondent hotel against the judgment of this Hon'ble High Court DT. 24.08.2018	**Ann. 7,** at pgs. 105 - 106
5.	21.08.2019	NCSCM submitted its report and map, identifying three structures to be demolished.	
6.	15.01.2020	Contempt Petition No. 2/2020 was filed by the Applicant in this Hon'ble High Court as the authorities had not complied with the court's directions to demolish the structures.	

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7.	March 2020	Two of the three offending structures were removed after the Contempt Petition was filed.	
8.	07.04.2022	This Hon'ble High Court passed a detailed order, directing the petitioner to join the Hotel company as a respondent [*R. 4*].	**Ann. 8,** at pgs. 107 - 114
9.	30.09.2022	This Hon'ble Court dismisses C.P. 2/2020, imposing costs of Rs. 50,000 on the Applicant.	**Ann. 1**, at pgs. 23 - 66
10.	28.02.2023	Hon'ble Supreme Court grants the Applicant the liberty to approach the High Court for waiver of costs.	**Ann. 3,** at pgs. 89 - 90
11.	13.06.2023	Present Review Appln. is filed	

PLACE: Porvorim, Goa

DATE: 13.06.2023 ADVOCATE FOR THE APPLICANT

IN THE HON'BLE HIGH COURT OF JUDICATURE OF BOMBAY AT PORVORIM, GOA.

Civil Review Application No._____/2023

in

Contempt Petition No.2/2020

***in* P.I.L. W.P. No.26/2017**

The Goa Foundation
through its Secretary, Dr. Claude Alvares,
age 75 years, Having Regd. Office at
Room No 7, Above Mapusa Clinic,
Mapusa, Goa 403507
PAN No. AAAAG0249C,
Income: Rs 10 - 15,00,000/- per annum (approx.),
Registration No. - 23/Goa/86,
Email id: goafoundation@gmail.com

...APPLICANT
[*Original Petitioner***]**

v/s.

1. **SHRI PARIMAL RAI,**
   Office of the Chief Secretary,
   Secretariat, Porvorim, Goa – 403521.

2. **SHRI PUNEET KUMAR GOEL,**
   Secretary (Environment),
   c/o Secretariat, Porvorim, Goa – 403521.

3. **SHRI JOHNSON BEDY FERNANDES,**
   Member Secretary, The Goa Coastal
   Zone Management Authority,
   with address at 1st Floor, B-Wing,
   Pandit Deendayal Upadhyay Bhavan,
   Pundalik Nagar, Alto-Porvorim,
   Bardez, Goa – 403521.

4. **V.M. SALGAOCAR CORPORATION PRIVATE LIMITED,** having its registered
   office at Salgaocar Centre, E4, Murgaon Estate,
   Off Airport Road, Chicalim, Goa – 403711**.**

….RESPONDENTS

(Above addresses are all registered addresses of parties)

APPLICATION FOR REVIEW

OF JUDGEMENT AND ORDER DT. 07.10.2022

To,

The Hon'ble Chief Justice

and His Companion Judges,

Bombay High Court at Porvorim, Goa

MAY IT PLEASE YOUR LORDSHIPS

1. This Application has been filed seeking partial review of the judgement and order dt. 30.09.2022 passed by this Hon'ble High Court in C.P. 2/2020 in P.I.L. W.P. 26/2017. The order dated 30.09.2022 is enclosed at **Annexure 1.**

2. The paragraphs of the order of which review is sought on the basis of this Application are paras 36 and 37, and are set out for easy reference below:

> "36. Thus, we find no case whatsoever has been made out for proceeding against the respondents to entertain the contempt petition, accordingly, we dismiss this contempt petition. However, as we find ourselves persuaded to hold that this contempt petition is an abuse of the process of law, we cannot dismiss the contempt petition simpliciter, but it has to be dismissed with

costs. Accordingly, the contempt petition is dismissed with costs of Rs.50,000/-.

37. The petitioner shall deposit the costs of Rs.50,000/- with the Goa State Legal Services Authority within two weeks from the date on which copy of this order is made available. Ordered accordingly."

3. The Applicant had approached the Hon'ble Supreme Court with a Special Leave Petition (Civil) Diary No(s). 953/2023 against the judgement and order dt. 30.09.2022. A copy of this SLP [*without annexures*] is enclosed as **Annexure 2.**

4. The Hon'ble Supreme Court vide its order dated 28.02.2023 while disposing of the Special Leave Petition granted the Applicant the liberty to approach this Hon'ble Court on the aspect of waiver of costs. The order of the S.C. dt. 28.02.2023 is at **Annexure 3**, and the relevant portion of the order states as under:

"Learned counsel for the petitioner submits that the petitioner is a voluntary organization with 30 years of history and it is in pursuance to the contempt proceedings filed in question that two of the three offending structures were subsequently demolished. As far as the retaining wall is concerned, it is submitted that though the petitioner may have different perception from what the concerned Court had taken, the petitioner will exercise its right to assail that order in accordance

with law whether that retaining wall can or cannot be retained.

That leaves us only about the issue of costs. It is the submission of the learned counsel for the petitioner that there is no occasion to impose costs when it is only in pursuance to the contempt proceedings that the two structures have been removed.

In our view, cost is normally a discretion of the Court and we leave it to the petitioner to move the High Court pointing out the aforesaid facts seeking waiver of costs."

5. The SLP was filed by this Applicant against the judgement of this Hon'ble Court dated 30.09.2022 disposing of Contempt Petition No. 2/2020. The Contempt Petition was filed as this Hon'ble Court's Judgment and Order dated 24.08.2018 passed in PIL WP No. 26/2017 directing the authorities to demolish certain structures erected by the Resp. Hotel in violation of the CRZ Notification, 1991 was not complied with during the specific period imposed by this Hon'ble Court. During the pendency of the Contempt Petition, two of the three structures that had to be removed were finally demolished. The third structure, a wall across the public beach, was still in existence at the time of the disposal of the Contempt Petition.

6. In the SLP, the Applicant raised two issues: One, that the Hon'ble High Court disposed of the Contempt Petition even while the third of the three structures – required to be demolished by this Hon'ble Court's crystal clear direction – was yet to be removed. The decision of the authorities not to remove the offending wall and restore the area despite the directions of this Hon'ble Court was based on a report obtained by the Water Resources Dept (WRD) for the GCZMA. The second issue raised was that this Hon'ble Court had admonished the petitioner for "abuse of the process of law" and proceeded without notice to impose a penalty of Rs.50,000 on the petitioner to be paid within 30 days.

7. Consequent to the order of the Supreme Court dated 28.02.2023, this Applicant is taking necessary steps to challenge the WRD/CPWRS report and the GCZMA's decision to accept the same, as the report supports the continued existence of a structure which, on record, violates the High Court's direction under Article 226 that it be removed and that the area be restored.

8. The instant application for Review is filed in connection with the second issue, i.e., the remarks made by this Hon'ble Court in para 36 that the contempt petition is "an abuse of the process of law" and the penalty imposed by this Hon'ble Court in para 37 on the Applicant/petitioner to deposit a sum of Rs. 50,000 with the Goa State Legal Services Authority. Through this application, the Applicant seeks review of the said judgement in this regard only. The Applicant has paid the

fine within time, under protest. In respect of this matter, the Hon'ble Supreme Court has permitted the petitioner to move the Hon'ble High Court seeking waiver of costs. Hence this application.

FACTS IN BRIEF

9. A few facts may be set out in brief, for apprising this Hon'ble Court of the context in which the Applicant filed and pursued the Contempt Petition. The original writ petition challenging the approval granted by the coastal authority to erect a hotel on the Gaspar Dias beach at Miramar was filed in 1993. The petition was heard finally in the year 2015 (22 years later).

10. By its judgment dated 29.06.2015 in W.P. 333/1993, this Hon'ble Court allowed each and every contention of the petitioner and rejected every single contention of the Respondent Hotel and the authorities. For this reason it observed that the approval dated 29.11.1991 permitting constructions of the resort as regards the impugned area stood vitiated. For the purpose of protection of the CRZ and restoration of the beach to the public, it directed that an imaginary line parallel to the HTL be drawn on the said plot from the only authorized construction available in the area – a lighthouse – and that whatever constructions were found in the zone between the HTL and the imaginary line would necessarily have to be dealt with as per law.

11. This Hon'ble Court also levied costs in favour of the Applicant (*Original Petitioner in W.P. 333/1993*). Those costs were calculated by the Ld. Registrar as Rs. 370/- only. The amount has not been paid to the petitioner [*Applicant* herein] till date, as the costs are not deposited with the Registrar. Further, the Registrar requires the Applicant to take out further proceedings in order to obtain the amount. Copy of Registrar's Order dated 14.02.2019 is at **Annexure 4**.

12. In pursuance of the Court's judgement, the GCZMA produced a report that no demolition was required of any construction as its own investigation in the matter placed the HTL squarely in the water and the impugned constructions beyond the imaginary line drawn parallel to the HTL. The Court set aside the report and directed that a fresh action be taken to implement its directions. Copy of this Court's order dt. 24.10.2016 is enclosed at **Annexure 5**.

13. Thereafter, another report was prepared by the GCZMA in 2017 which repeated the same conclusion albeit for different reasons. When the Applicant raised objections to the second report, this Hon'ble High Court granted leave to the petitioner to file a fresh petition challenging the second report. Copy of this Court's order dt. 21.08.2017 is enclosed at **Annexure 6.**

14. Pursuant to this order, the petitioner filed P.I.L. W.P. 26/2017 which was also allowed by judgement of this Hon'ble High Court dated 24.08.2018. The Court decided to take the matter out of the hands of the GCZMA and instead directed the

National Centre for Sustainable Coastal Management (NCSCM) – an independent authority recognised by the Ministry of Environment as an expert on coastal issues – to visit the site, demarcate the existing HTL and the imaginary line parallel to it and identify the offending structures. Pursuant to submission of the report, the State authorities were required to demolish the structures **within 4 weeks** of the receipt of the same. This Hon'ble Court also directed that in case its orders were not complied with, this would be considered contempt of court.

15. The Respondent hotel moved an SLP against the judgement which was rejected by the Hon'ble Apex Court by its order dated 11.01.2019, which is enclosed at **Annexure 7**.

16. The NCSCM submitted its report and map on 21.08.2019 identifying three structures to be demolished and their location within the prohibited area. However, despite the Court's directions that such structures be removed in 4 weeks of submission of the NCSCM report, no demolitions took place at the site, nor was any application filed by the authorities for additional time to comply. In other words, by 21.09.2019, since the area was not restored since none of the 3 structures identified in the NCSCM report had been removed, the parties were, in fact, already in contempt.

17. In line with the Court's directions regarding the issue of contempt if the orders were not complied with, this Applicant filed Contempt Petition No. 2/2020 on 15.01.2020 before this

Hon'ble High Court. Applicant reiterates that as of the date of filing of the C.P, the respondents were in clear contempt of the directions issued by this Hon'ble Court.

18. Nevertheless, the pendency and adjudication of the Contempt Petition before this Hon'ble Court led to the removal in March 2020 of two of the three offending structures identified for demolition in the report of the NCSCM, that is, after the Contempt Petition was filed. Thus it is an admitted fact that the Contempt Petition was already partly successful in getting the orders of this Hon'ble Court implemented. The only structure that remained was the compound wall.

19. During several hearings, the authorities indicated that the wall would be removed and that more time was required. Hence, the Court kept the Contempt Petition pending so as to ensure that its directions would be complied with. However, in the meantime, the GCZMA, unknown to the petitioner, had initiated steps to obtain one more report, this time from the Water Resources Department (who in turn outsourced the work to the Central Power and Water Resources Institute, Pune), to urge that the wall should not be removed as that exercise would purportedly lead to erosion of the beach.

20. Subsequently, the Member Secretary of GCZMA informed this Hon'ble Court in the Contempt Petition of its decision to retain the compound wall in view of the report received from the WRD, which meant that the area would not be restored as

directed by this Hon'ble Court. The other respondents filed their affidavits in support of the GCZMA decision.

21. When the Court took up the matter for hearing on 07.04.2022, it passed a detailed order, which is enclosed at **Annexure 8,** *inter alia* directing the petitioner to join the Respondent Hotel company as a respondent, which the petitioner did.

22. When the matter was again taken up on 30.09.2022, to the utter shock and bewilderment of the petitioner, this Hon'ble Court proceeded to dismiss the Contempt Petition. In addition to holding that no grounds for contempt have been made out in the petition, the Court faulted the petitioner for pursuing the Contempt Petition for the following reasons:

    (i) high ranking officials had been joined as respondents;

    (ii) the petitioner ought to have challenged the GCZMA's order to retain the compound wall rather than persist with its prosecution of the contempt petition.

23. The Applicant submits that two of the three high ranking officials joined as respondents in the Contempt Petition, were in fact respondents in the original PIL. The third respondent, the Secretary, Environment, was joined as respondent as in an earlier order in these proceedings, this court had directed the Secretary, Environment to ensure compliance with its orders along with the Chief Secretary of the State. Copy of the order dated 03.07.2017 directing the Chief Secretary and Secretary

of the Concerned Department (Environment) to ensure such directions are complied with within the time granted, is enclosed at **Annexure 9.** The fourth respondent, the Hotel was joined as respondent as the Company protested its exclusion from the proceedings, after which the Court directed this applicant to join them as a respondent in its order dt. 07.04.22, even though this Applicant was firmly of the opinion that they were not required to be made a respondent as the Contempt Petition was directed solely at the actions of the authorities.

24. As regards challenge to the GCZMA's decision to retain the compound wall and also to the CPWRS report, the applicant / petitioner admittedly had not done so, believing in good faith that the respondents were already in contempt, and further, because it was not at all convinced that an order of a constitutional court could summarily be set aside by the decision of a statutory body like the GCZMA, without the GCZMA even approaching this Hon'ble Court for permission to adopt the report, or to be dispensed from curing the third illegality marked in the NCSCM report. Judicial propriety and sanctity demanded that the GCZMA ought to have first applied for modification of the HC judgement dt. 24.08.2018 [*in P.I.L.W.P. 26/2017*].

25. The Applicant was naturally bewildered and wholly dismayed when the Court not only dismissed the Contempt Petition, but imposed costs of Rs.50,000 on the organisation for abuse of the process of law. The organisation had pursued this matter for 28 years with the sole intention of recovering the beach to

the public, which was clearly the intention of this Hon'ble High Court when it passed the first judgement in the matter. In the humble submission of this Applicant, this Court's order imposing a penalty of Rs. 50,000 on the petitioner in the facts, history and circumstances of the case, without even putting the Applicant to notice, was without basis and in violation of the principles of natural justice and fairness.

26. Since hardly any time was provided to the Applicant/ petitioner by this Hon'ble Court to even appeal the order, the Applicant paid the Rs.50,000 penalty to the Legal Authority as directed under protest. A copy of the letter of the Applicant depositing the amount and the receipt of payment is enclosed at **Annexure 10 Colly**.

27. Thereafter this Applicant filed an S.L.P. challenging the order before the Hon'ble Apex Court, which was pleased to pass its order dated 28.02.2023 [***Ann. 3***] based on which this Review application has now been filed.

GROUNDS

28. Being aggrieved by the judgement and order dt. 30.09.2022, the Applicant is therefore approaching this Hon'ble High Court in review seeking a waiver of costs of Rs.50,000 imposed by this court vide its order dated 30.09.2022, on the following grounds -

a) The Petitioner could not have been accused of "abuse of the process of law" when it had pursued this public

interest matter for 28 years and received favourable orders from the Court in both the writ petitions and applications filed by it in the course of these two and half decades. Never once did this Hon'ble Court find any occasion to assail the conduct of the petitioner.

b) The respondent authorities were already in contempt by 21.09.2019 from non-removal of the structures listed in the NCSCM report. Contempt is a matter of fact which can either be affirmed or rebutted. In the present instance, the impugned structures were in continuance in the said location identified by NCSCM when the CP was filed. At the time of disposal of the Writ Petition, one of the 3 constructions continued to exist at site. Hence the direction of the court to restore the area had not been complied with.

c) The Court itself had found reason to continue with the hearing of the Contempt petition over 3 years and passed several orders for seeking compliance, as a result of which, despite several months of delaying tactics by the resort and GCZMA, two structures were removed, which however could not lead to restoration of the area unless the third large structure was also removed.

d) It is therefore obvious that by the time the Court adjudicated this matter, two of three offending structures had been removed due to the persistence of

the petitioner and as a result of the contempt petition. Therefore, in view of the success of the petition in this regard, the Applicant could never have been penalized with costs or been accused of "abuse of process of law."

e) This Court had itself expressly ruled in its judgment dt. 24.08.2018 that non-compliance with the Court's order would invite contempt of court, which portion of the judgement is reproduced below:

"93. In view of the above discussions, we dispose of the Writ Petition by following directions :

(II) … h) Any violation of the above directions both, by the Authorities and the Respondent No.3-Hotel, will be viewed seriously and will be treated as a contempt of the order of this Court."

f) As a petitioner in public interest, the Applicant believed that it was its duty to draw the non-compliance of this Court's order to the attention of the Court. Contempt is a matter between the Court and the alleged contemnor. The Petitioner could not have been penalized or held to have abused the process of law for its efforts to ensure compliance of the Court's judgement. The matter had come before the Court on several occasions, for more than 3 years, during which time the Court continued to monitor the compliance of its orders through the contempt petition.

g) Two of the three high ranking officials were required to be joined as respondents in the CP, because they were respondents in the original PIL and further, the Court had issued the directions to them to be complied with. The Secretary, Environment, was joined as respondent in the Contempt Petition as, in an earlier order in these proceedings, this court had directed the Secretary, Environment, to ensure compliance with its orders. Hence this applicant considered it appropriate to join him as respondent in the Contempt petition. Each one of these three 'high ranking officials' had been party to decisions taken regarding compliance with the Court's orders during the period they were holding office and they have stated so in their affidavits. The Hotel was joined as respondent in the CP as the Company protested its exclusion from the proceedings, after which the Court directed this applicant in its order dt. 07.04.2022 to join them as a respondent, even though this applicant was firmly of the opinion that they were not required to be made a respondent. At any rate, there are several judgments of the Supreme Court that have held that no matter how high the rank a person holds in the administration, he will always be subject to the rule of law.

h) The penalty imposed by this Hon'ble High Court was therefore without rational basis, wholly unjust, and without considering the laborious efforts of the

petitioner [Applicant] over two decades to pursue the matter in public interest and finally to ensure that the Court's orders were complied with.

i) The imposition of the penalty itself was an unjustified attack on the reputation of the organization and therefore wholly unnecessary, even if the Court had come to the conclusion that there was no contempt committed by the respondents, since contempt is solely a matter between Court and alleged contemnor.

j) The penalty of Rs.50,000 for an organization which conducts itself only from donations from the public for the past 36 years was a heavy penalty to bear and hurtful in every respect.

k) The Court imposed the penalty without putting the petitioner [Applicant] to notice of the Court's intent to impose such a heavy cost and therefore breached the grounds of fairness and natural justice.

29. As stated above, the petitioner has taken steps to challenge the WRD/CWPRS report and the GCZMA decision to retain the compound/retaining wall, thus giving intention of its decision to persist with actions to ensure that all the directions of this Hon'ble Court in its judgments in this matter are implemented as directed, as they have achieved finality.

30. However, in the present instance, if this Hon'ble High Court sees fit to accept the Applicant's plea to review the order to that extent by deleting the words "abuse of process of law" and the imposition of penalty of Rs. 50,000 in the facts and circumstances set out hereinabove, the Applicant would consider that justice has been done and not wholly mislaid as appears to have happened in the facts and circumstances of this case.

LIMITATION

31. There has been a delay in preferring the instant Review Application. After the impugned judgement and order dt. 30.09.2022 was pronounced, the Applicant preferred a Special Leave Petition in the Hon'ble Supreme Court, which came to be decided only on 28.02.2023 in terms of the Hon'ble S.C. granting the Applicant liberty to approach this Court regarding the issue of waiver of costs. These facts are more particularly set out in a separate Application for Condonation of Delay which has been filed along with this Review Application. The Applicant craves leave to rely on the contents thereof if required in the course of the instant proceedings.

32. The Necessary Court Fee is affixed herewith.

33. The Applicant states that this Hon'ble Court has the jurisdiction to hear and decide the issues raised in this Review Application.

34. The Applicant states that to the best of its knowledge and research, the issues raised in this Application were not dealt with or decided and that a similar or identical Petition/Application was not filed earlier by the Applicant on the same matter either in this Hon'ble Court or in the Supreme Court of India.

35. The necessary certificate in support of the Civil Review application by the Advocate for the Applicant is hereto annexed and marked as **Annexure 11.**

Prayers

36. The Applicant is therefore approaching this Hon'ble Court for the following prayers:

a) For an order reviewing para 36 of the judgment dated 30.09.2022 in C.P. No.2/2020 by deleting the words, "abuse of process of law."

b) For an order reviewing para 37 of the judgment dated 30.09.2022 in C.P. No.2/2020 requiring the Applicant / petitioner to pay a sum of Rs.50,000 as penalty, and for return of the said amount to the Applicant.

c) For any other reliefs this Hon'ble High Court may be pleased to grant in the facts and circumstances of this case.

PLACE – PORVORIM, GOA
DATE – 13.06.2023 Applicant

IN THE HON'BLE HIGH COURT OF JUDICATURE
OF BOMBAY AT PORVORIM, GOA.

Civil Review Application No._____/2023

in

Contempt Petition No.2/2020

***in* P.I.L. W.P. No.26/2017**

THE GOA FOUNDATION

…Applicant

V/S

SHRI PARIMAL RAI AND ORS ...Respondents

AFFIDAVIT IN SUPPORT OF THE APPLICATION

I, Dr. Claude Alvares, Indian National, Secretary of the Applicant above named, do solemnly state on oath as under:

1. I say that I have filed today the accompanying Civil Application for the reliefs sought therein.

2. I say that this Application has been drafted on my instructions. I solemnly declare and say that what has been stated in paragraphs 1(p), 2, 3, 4(p), 5(p), 6(p), 7(p), 8(p), 9, 10(p), 11(p), 12(p), 13(p), 14(p), 15, 16(p), 17(p), 18(p), 19(p), 20(p), 21, 22(p), 23(p), 24(p), 25(p), 26, 27(p), 28(p), 29(p), 31(p), 34, and 35 is true to the best of my knowledge/ official documents and records, and what is stated in paragraphs and 1(p), 4(p), 5(p), 6(p), 7(p), 8(p), 10(p), 11(p), 12(p), 13(p), 14(p), 16(p), 17(p), 18(p), 19(p), 20(p), 22(p), 23(p), 24(p), 25(p), 27(p), 28(p), 29(p), 30, 31(p), 32, 33 and 36 are in the nature of legal submissions which I believe to be true and correct. No part of it is false and nothing material has been concealed therefrom, and the annexures enclosed are true and correct copies of their respective originals.

Solemnly affirmed at Porvorim, Goa,
this the 13th day of June 2023

Deponent

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Esha

IN THE HIGH COURT OF BOMBAY AT GOA

CONTEMPT PETITION NO. 2 OF 2020
IN
PIL WRIT PETITION NO. 26 OF 2017
WITH
MISC. CIVIL APPLICATION NOS. 150 OF 2022,
64 OF 2020, 198 OF 2022 AND 2119 OF 2022 (F)
IN
CONTEMPT PETITION NO. 2 OF 2020

THE GOA FOUNDATION, THR. ITS SECRETARY, DR. CLAUDE ALVARES ... PETITIONER

VS

PARIMAL RAI, OFFICE OF THE CHIEF SECRETARY AND 3 ORS. ... RESPONDENTS

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Ms. Norma Alvares with Mr. Om D'Costa, Advocates for the Petitioner/Applicant.

Mr. S.D. Lotlikar, Senior Advocate with Mr. Deep Shirodkar, Additional Government Advocate for Respondent Nos. 1, 2 and 3 in CP No. 2/2020.

Mr. S.R. Rivankar, Senior Advocate with Mr. Rama Rivankar and Ms. Nishita Rivankar, Advocates for Respondent No. 3 in MCA No. 150/2022.

Mr. Nitin Sardessai, Senior Advocate with Mr. Ashwin D. Bhobe, Mr. Jitendra P. Supekar, Mr. Sufiyan Sayed, Mr. Roger D'Souza, Mr. Shivam Phadte, Mr. Kabir Sabnis and Ms. Gautami Kamat, Advocates for Respondent No. 4.

HIGH COURT OF BOMBAY AT GOA
सत्यमेव जयते
PORVORIM-GOA

CORAM: G.S. KULKARNI &
BHARAT P. DESHPANDE, JJ.

DATED: 30 SEPTEMBER 2022

ORAL ORDER: (per G.S. Kulkarni, J.)

1. This is a Contempt Petition whereby the petitioner has alleged contempt of an order dated 24 August 2018 passed by the co-ordinate Bench of this Court in disposing of PIL Writ Petition No. 26/2017. At the outset, we need to refer to the operative directions of the said order passed by this Court and more particularly, to direction no. 2(f) of which contempt is alleged. The said directions reads thus:

> *"93. In view of the above discussions, we dispose of the Writ Petition by following directions :*
>
> *(I) The impugned decision of the GCZMA in the meeting dated 1 August 2017 accepting the Second Report and the Second Report filed by the GCZMA, are quashed and set aside;*
>
> *(II) (a) The Authorities shall, within three weeks from today, approach the National Centre for Sustainable Coastal Management, Chennai in respect of the paragraphs 37(i) of the Judgment and Order dated 29 June 2015 in Writ Petition No.333 of 1993;*
>
> *(b) The NCSCM is requested to submit an estimate of costs to the Authorities within a period of three weeks from the date of receipt of the proposal from the Authorities*

(c) After the estimate of costs is received from the NCSCM, the Authorities will forthwith call upon the Respondent No.3-Hotel to make payment of costs estimated by the NCSCM, directly to the NCSCM, within a period of three weeks.

(d) The NCSCM will carry out the exercise as indicated in paragraph 37(i) of the Judgment and Order dated 29 June 2015, within a period of four months thereafter and prepare a report.

(e) It is open for the NCSCM to proceed to carry out the exercise without waiting for the tender of costs by the Respondent No.3-Hotel.

(f) After the exercise is so completed by the NCSCM, the Authorities, based on such conclusions arrived at by the NCSCM will take necessary action against the Respondent No.3-Hotel in respect of an area which is found to be in violation of the CRZ Notification of 1991, within a period of four weeks.

(g) The Authorities and the Respondent No.3 Hotel shall supply all the necessary documents and information to the NCSCM as and when required for the purpose of carrying out the exercise.

(h) Any violation of the above directions both, by the Authorities and the Respondent No.3-Hotel, will be viewed seriously and will be treated as a contempt of the order of this Court.

(i)The above directions shall be read along with the observations made by us in this Judgment.

(III) The Respondents-Authorities shall take necessary steps forthwith to ensure that the beach in question is made accessible to the general public."

(emphasis added)

2. The public interest litigation in question on which the above directions were made by this Court had some antecedents. The petitioner had earlier approached this Court in Writ Petition No. 333/1993 making a grievance that a hotel named 'Goa Marriott Resort' owned by respondent no. 4 (for short "the hotel) located near the Gaspar Dias Beach at Panaji, had breached the Coastal Regulation Zone (CRZ) restrictions. We need not delve in respect of the other details of the said petition, suffice it to state that the said Petition came to be disposed of by the co-ordinate Bench of this Court vide judgment and order dated 29 June 2015, whereby this Court directed the authorities to draw a line parallel to the High Tide Line (HTL) from a light house, a structure nearby. The authorities were to determine whether any construction of the hotel fell towards the river side of this line, after which to take necessary action against the hotel. The State of Goa was directed to take all measures to prevent the erosion of the sand bank and siltation of the river. The hotel was directed to remove the obstructions to the access of the public to the beach. The operative directions of the Court in Writ Petition No. 333/1993 read thus:

> *"37. In view of the above, we pass the following order:-*
>
> *(i) The respondent nos. 1 to 4 or any other designated competent authority shall proceed to examine whether any of the construction activities carried out by the*

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respondent no.7 comes towards the river side of the imaginary line to be drawn from the Light House shown in the plan of the Court Commissioner parallel to the High Tide Line in the manner as stated herein above and thereafter proceed to take necessary action against the respondent no.7 for restoring such area in accordance with law within six months from today.

(ii) The respondent no. 2 shall take all measures to prevent the erosion of the bank and siltation of the river Mandovi along the concerned land of the respondent nos.7 and 9.

(iii) The respondent nos.7 and 9 shall not obstruct the access of the public to the subject beach through the said reserved path and the respondent no.2 shall take all measures to make such path accessible to the said beach in accordance with law.

(iv) Rule is made absolute in the above terms.

(v) The petition stands disposed of accordingly with costs.

(emphasis added)

3. On the ground that the above directions as made by the Division Bench were circumvented, the petitioner filed the said second petition (PIL Writ Petition No. 26/2017), in which, the directions as noted in paragraph 1 above were made. By these directions, the authorities were directed to approach the National Centre for Sustainable Coastal Management, Chennai (NCSCM) in respect of paragraph 37(i) of the judgment of the Division Bench

in Writ Petition No. 333/1993 to carry out the exercise as directed in terms of paragraph 37(i) of the said judgment.

4. It so transpired that after the orders were passed in PIL Writ Petition No. 26/2017, the NCSCM in accordance with the directions of this Court prepared a report on the basis of survey and mapping exercise carried out by it to examine whether any construction activity by the said hotel comes to the riverside up to the imaginary line from the lighthouse shown on the plan of the Court Commissioner parallel to the HTL. Such report is dated 10 September 2020. The report in paragraph 7.0 observed thus:

> *7.0 Observations of NCSCM:*
>
> *1. As per the results of the survey and mapping exercise carried out by NCSCM, it is seen that the HTL of 1991 demarcated by NCSCM coincides with the remnants of the collapsed retaining/parapet wall. The HTL of 1991 and the remnants seen on the ground of the collapsed retaining wall are depicted in the said map, (Fig-1), along with the existing retaining wall, among other details.*
>
> *2. As per the enclosed detailed signed map on 1:1000 scale, depicting the imaginary line drawn from the lighthouse shown in the plan of the court commissioner, parallel to the High Tide Line of 1991, the structures (in the hotel Goa Marriott resort project in question) which fall on the river side of the imaginary line are,*

Parts of swimming pool, Hut and the existing retaining wall.

3. The distance between the Light house (depicted in the Court commissioner's report) and the High Tide Line of 1991 is 19 m.

4. The imaginary line was drawn at a distance of 19 m from the High Tide Line of 1991, towards the landward side.

5. The distance between the western facade of the Youth hostel and the High Tide Line of 1991 is 38m.

6. The distance of the Hotel Goa Marriott resort's extreme most projecting sections/towards the river from the High Tide Line are 24m in the north, 34m in the middle and 23m in the south.

7. The structures (in the Hotel Goa Marriott resort project in question) which fall on the river side of the said imaginary line are parts of the swimming pool, hut and the existing retaining wall.

8. The project area/the project in question falls under the CRZ II category.

9. The distances of the structures (in the Goa Marriott hotel resort project in question) which fall on the said imaginary line (within the 19m buffer) on the river side, from the HTL of 1991, are given below:

Sl.No.	Points on the structures	Distance from the HTL of 1991
1	Existing Retaining Wall (P1)	7.5 m
2	Hut (P2)	15 m
3	North west corner of swimming pool (P3)	14.0 m
4	Swimming pool middle point facing river side (P4)	16.5 m

5	*Swimming pool south west point (P5)*	*15 m*

(emphasis supplied)

5. Thus, the case of the petitioner is that in the said report, as part of the swimming pool, hut, and the existing retaining wall were categorised as structures, which falls on the river side of the imaginary line, hence, such observations were directly hit by the directions of the Division Bench as contained in clause (II)(f) of paragraph 93 as noted above, and qua these structures the authorities were required to take necessary action of demolition against the hotel. It is the petitioner's case that since the NCSCM had so concluded, it was incumbent for the "Authorities" based on such a conclusion to take necessary action against the hotel in respect of an area, which according to the petitioner was found to be in violation of CRZ notification of 1991 within a period of four weeks. In other words, the petitioner contends that the part of the swimming pool, hut, and the existing retaining wall was required to be demolished within four weeks from the NCSCM making such a report and an action having not being taken in respect of these structures, the authorities are in contempt of the directions as contained in paragraph 93(II)(f) of order dated 24 August 2018 (supra). It is for such reason, the present contempt petition was filed.

6. It appears that after the report was made, action was taken insofar as the part of the hut and the swimming pool are concerned as it is stated that they were removed on 16 March 2020 and 8 May 2020 respectively. The learned Counsel for the petitioner would not dispute this position. Thus, the only issue that has been canvassed and falls for consideration is as to whether there is any intentional breach of the orders passed by this Court, concerning the existing retaining wall. Such issue, in the context of contempt powers, whether be exercised against the respondents who are arrayed as contemnors has been the subject matter of a contest between the petitioner and the respondents.

7. Before we embark on the submissions as made by the learned Counsel for the parties, we note as to who are arrayed to be the contemnors. Respondent no. 1 is arrayed in his capacity as the "Chief Secretary" of the State of Goa. Respondent no. 2 is the "Secretary of Environment". Respondent no. 3 is the "Member Secretary" of the Goa Coastal Zone Management Authority (for short, GCZMA). It needs to be noted that the Secretary Environment was not a party in the writ petition. By an amendment, respondent no. 4-hotel was impleaded as a party to this contempt petition.

8. As noted above the retaining wall being maintained and not removed by the authorities is contended to be the breach of the orders passed by this Court.

9. The learned Counsel for the petitioner would submit that the non-removal of the existing retaining wall is an action amounting to contempt on the part of the officials-respondents being directly in breach of the directions as contained in paragraph 93(II)(f) of the orders passed by the Division Bench (supra). It is contended by the petitioner that once the NCSCM has categorised the retaining wall to be an offending structure, there was no question of the authority not taking any action to demolish the retaining wall. It is her contention that the direction is required to be considered as it stands and there is no scope for any other inference to be made, in regard to the said directions so as not to take any action or resort to further decision making on the issue of the retaining wall. The learned Counsel for the petitioner has contended that direction 93(II)(f) as made by the Division Bench while disposing of PIL Writ Petition No. 26/2017, cannot be read with or influenced by any other orders or observations/directions made by the Division Bench. It is for such reason the Court needs to initiate contempt action against the respondents for having intentionally

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disobeyed the clear mandate of the directions of the Court as contained in paragraph 93(II)(f). It is her submission that in fact, the orders in question passed by this Court are further amplified when the Court observed in paragraph 93(II)(h) that, any violation of the said directions by the authorities was to be viewed seriously and will be treated as 'Contemnors' of the orders of this Court. The order being self operative, this is a clear case where this Court needs to take action against the respondents for having intentionally breached the directions of this Court in not removing the retaining wall.

10. As a notice before admission was issued, the respondents have appeared. Also reply affidavits on behalf of the respondents have been placed on record. The official respondents which include the Chief Secretary, State of Goa, Secretary of Environment, and Member Secretary of the Goa Coastal Zone Management Authority (GCZMA) in one voice have contended that there is not a remotest breach of the orders of this Court by any of these authorities. They say so on affidavit expressing their unconditional respect and regard to the orders of this Court. Similar is the stand of the hotel, which is raised on behalf of respondent no. 4 in the present Petition.

11. Mr. Lotlikar, learned Senior Counsel for the Chief Secretary, State of Goa as also, for the State would submit that the judgment dated 24 August 2018 was necessarily required to be read with judgment dated 29 June 2015 passed by the Division Bench in Writ Petition No. 333/1993. He has drawn our attention to the following paragraphs of the affidavit as filed by respondent no. 1– Chief Secretary to contend that the decision to retain the wall has been taken after hearing all the parties and after calling for expert opinion based on concrete technical materials, more particularly, considering the position of the river along the concerned lands of respondent no. 4 (the hotel). We need to note such contentions of the Chief Secretary in said paragraphs, which read thus:

> *10. I say that to prevent the erosion of the bank and siltation of river Mandovi along the land of the Respondent Hotel, for which purpose the State of Goa was enjoined to take necessary steps, the Authority decided that the retaining wall could be allowed to continue subject to certain conditions. I say that the GCZMA is an Authority constituted in terms of the powers conferred under the Environment (Protection) Act, 1996. The Authority is an expert body appointed to deal with issues relating to the Coastal Regulation Zone. I say that the Authority has various powers and has to deal with environmental issues relating to the Coastal Regulation Zone which may be referred to it by the Government. The Authority also has to identify coastal areas highly vulnerable to erosion or*

degradation and to take appropriate measures for such areas.

13. I say that the Authority thereafter again consulted the Water Resources Department and recorded the statement of the Chief Engineer of the Department. The WRD also gave a power point presentation to the Authority. I say that the Authority, after considering all the issues and the directions issued by this Hon'ble Court, passed the Order dated 16.3.2021. I say that since existence of the retaining wall is critical, even if the existing one is demolished, the new wall will have to be constructed at that very place to avoid erosion and siltation at the expense of the Government.

14. As regards the third issue about the access being blocked, a report was called for from the Water Resources Department, vide letter dated 06.02.2020 issued by the Authority. The WRD responded by a letter dated 12.02.2020 pointing out that an inspection was held and it was found that the access connected to the public road leading to the beach was clear of obstruction and was about 100 metres in length and 5 metres in width near the hotel. Photographs were also supplied which are a part of the letter, which is enclosed along with the affidavit dated 13.02.2020 filed by the Member Secretary.

16. I, however, submit that in the event this Hon'ble Court comes to the conclusion that the retaining wall is liable to be demolished, notwithstanding what has been stated hereinabove, I shall ensure that the same is carried out as per the directions of the Court.

12. Mr. Lotlikar has also drawn our attention to the petitioner's rejoinder affidavit to contend that the said affidavit, does not in the

remotest manner question the decision making process much less, to contend that such decision was in intentional disobedience of the Court's order dated 24 August 2018. Mr. Lotlikar has also drawn our attention to paragraphs 18 and 21 of the affidavit dated 13 February 2020 filed on behalf of Shri Johnson Fernandes, Member Secretary of GCZMA in regard to the issue of soil erosion as considered by the GCZMA, which is directly relevant to the conservation of the retaining wall. We need to note the said paragraphs, which read thus:

> *"18. I say that as regards the retaining wall, the same is linked with soil erosion and the decision has to be taken based on the Report of the Water Resources Department, which is the specialized agency dealing with matters relating to soil erosion. I say that this is all the more necessary in view of the fact that the State was directed to take all measures to prevent the erosion of the bank and siltation of the river Mandovi along the land of the private respondent.*
>
> *21. As regards the anti erosion measures and the retaining wall, the WRD has submitted a letter pointing out that inspection was held on 11.02.2020 along with Scientist Shri V.B. Sharma of Central Water and Power Research Station, Khadakwasla, Pune, a premiere institute of Ministry of Jal Shakti, Department of Water Resources, River Development and Ganga Rejuvenation of the Government of India to examine the impact of demolition of the retaining wall and that Shri Sharma had submitted a preliminary report observing that the exiting wall is able to protect the river bank from the two forces exerted by high river*

currents and wave impact. It is further observed that the two forces may cause erosion in the vicinity of the hotel area if the wall is demolished. The letter has also stated that the report observed that the final findings on the effect of demolition can be provided after carrying out detailed studies based on field observation like local bathymetry in the river, sediment size of bed material, suspension sediments concentration, etc."

13. Our attention is also drawn to the additional affidavit filed by Shri Dasharath M. Redkar, Member Secretary of the GCZMA dated 17 March 2021, wherein the deponent has expressed the concern that if the retaining wall was to be removed it would cause irreparable damage to the shoreline resulting in eastward shifting of the river and causing damage to sea erosion. The relevant paragraphs of the said affidavit read thus:

6. I say that the GCZMA in the earlier affidavit had pointed out that it may not be possible to interfere with the retaining wall which exists on site until appropriate measures are explored and finalized to ensure compliance with the direction to prevent erosion more particularly because of the fact that the State was directed to take all measures to prevent the erosion of the bank and siltation of the river Mandovi along the land of the private Respondent.

7. I say that after the preliminary report of WRD was received, the GCZMA decided to await the final report of CWPRS. I say that the final report was received along with the letter of the WRD dated 16.9.2020 and was placed before the GCZMA. I say that the Report – "Mathematical Model studies on Hydrodynamics and

sedimentation for demolition of Retaining Wall at Marriott Hotel, Goa" observes that the site in influenced by waves, tide and large river discharges and inter alia concludes that the shifting of left bank would increase the curvature of the river resulting in more erosion at the left bank and further observes that the demolition of the existing wall would result in shifting of channel towards left bank and would further worsen the situation of erosion as angle of oblique current would further increase and the wave forces would be borne by the bank alone. The respondent no.3 crave leave to refer and rely upon the said final report dated 16/09/2020.

8. I say that it in view of observation made in the final report was decided to hear the parties and then take a decision in the matter. I say that the GCZMA also consulted the Water Resources Department, which expressed concern over removal of the retaining wall and its impact on anti-erosion works.

9. I say that the GCZMA has observed that the removal of existing retaining wall may cause irreparable damage to the shoreline resulting in eastward shifting of the river and causing damage to sea-erosion prevention measures already taken earlier in the area. I say that in the interest of prevention of erosion of the shoreline and to protect the erosion prevention works put up by WRD, the GCZMA decided to leave the retaining wall in the present condition and maintain it properly. I say that the GCZMA has directed that the Hotel shall not put the area between the retaining wall and the imaginary line drawn parallel to the HTL of 1991 as per the NCSCM Report for any kind of commercial use.

Annexed hereto and marked ANNEXURE C is a copy of the minutes of the 249th meeting of GCZMA held on 18.02.2021.

10. I say that if the retaining wall which exists at site serves the purpose of protecting the shoreline and the properties in the area from soil erosion and the tidal effects, no purpose will be served by demolishing the same and to again construct another wall. On the contrary, it will serve the concern of this Hon'ble court in its judgment dated 29/06/2015, whereby it is directed that the Government should "take all measures to prevent the erosion of the bank and siltation of the river Mandovi along the concerned land of the respondent nos. 7 and 9". I say that such demolition may cause major damage to the area, which is not in public interest or for that matter the interest of any of the parties.

14. Mr. Lotlikar would thus submit that the retaining wall is in accordance with the decision taken by the GCZMA and would be required to be retained and the same is in complete compliance with the decision taken by this Court in Writ Petition No. 333/1993. It is his submission that the directions of the Division Bench in PIL Writ Petition No. 26/2017 in paragraph 93(II)(f) (supra) directed the NCSCM to make a report and thereafter, considering the observations in the report, a decision was required to be taken and which has rightly been taken by the GCZMA by its order dated 11 March 2021 after hearing the parties. It is his submission that the petitioner is deliberately reading the directions

of the Court as it suits the petitioner as if the NCSCM observations would override the binding orders of the Division Bench dated 29 June 2015 in Writ Petition No. 333/1993. It is his submission that this is not what has even been remotely held by the Division Bench in its subsequent order dated 24 August 2018 in PIL Writ Petition No. 26/2017 wherein in no manner such earlier directions were disturbed. It is his contention that in fact the orders of the Division Bench dated 24 August 2018 in PIL Writ Petition No. 26/2017 were assailed by the hotel before the Supreme Court in SLP (C) No. 33743/2018. The Supreme Court by an order dated 11 January 2019 while dismissing the Special Leave Petition observed that no interference with the order of this Court was required and the petitioner therein (respondent no. 4-hotel) was permitted to urge its defence and take all its points before the authority at the time of consideration of the matter. The said order reads thus:

> *"Heard learned counsel for the petitioner and perused the relevant material.*
>
> *We are not inclined to interfere with the order impugned in the special leave petition. The same is, accordingly, dismissed.*
>
> ***As the High Court has merely sought a report from the National Centre for Sustainable Coastal Management with regard to the High Tide Line, we do not see how the said direction of the High Court could have prejudiced***

the petitioner, inasmuch as it will always be open to the petitioner to urge its defence and take all points before the said authority at the time of consideration of the matter."

(emphasis added)

15. It is hence Mr. Lotlikar's submission that even the Supreme Court has observed that respondent no. 4-the hotel could urge its defence and take all points before the authority at the time of consideration of the matter. Thus, according to Mr. Lotlikar, on a cumulative reading of the two orders of the High Court and the order of the Supreme Court, there was no infirmity in the procedure adopted by respondent no. 1 in accepting the expert decision of the GCZMA not to demolish the retaining wall and thus, there is no disobedience whatsoever on the part of respondent no. 1 much less, any intentional disobedience as to the orders passed by this Court.

16. Mr. Lotlikar would next submit that the contention of the petitioner to press this contempt petition is in fact contrary to the orders of the Division Bench dated 29 June 2015 in Writ Petition No. 333/1993 and the orders of the Supreme Court dated 11 January 2019 (supra). It is his submission that no litigant is permitted to argue a case, which is in fact offending the directions

of the High Court and the Supreme Court in the said proceedings. In support of his contentions, Mr. Lotlikar has placed reliance on the decision of the Supreme Court in **Dr. U.N. Bora Vs. Assam Roller Flour Mills Association & Another**[1] and **Indian Airports Employees' Union Vs. Ranjan Chatterjee & Another**[2].

17. Mr. Rivankar, learned Senior Counsel for the GCZMA-respondent no. 3 at the outset has drawn the Court's attention to the orders passed by the Division Bench of this Court in Writ Petition No. 333/1993 (supra) and more particularly, to the direction no. (ii) namely, *the respondent no. 2 shall take all measures to prevent the erosion of the bank and siltation of the river Mandovi along the concerned land of the respondent nos. 7 and 9.* According to Mr. Rivankar, this direction is instantaneously relevant insofar as the petitioner's case of removing the retaining wall is concerned. Mr. Rivankar would submit that the second petition (PIL Writ Petition No. 26/2017) on which the order in question dated 24 August 2018 is passed, was clearly a continuation of the issues as raised in Writ Petition No. 333/1993 decided by the Division Bench by its judgment and order dated 29 June 2015, and relevant to respondent no. 4-hotel, who was a

1 (2022) 1 SCC 101

2 (1999) 2 SCC 537

party in both the proceedings. Thus, Mr. Rivankar would submit that the consequence of the directions of the Division Bench in Writ Petition No. 333/1993 dated 29 June 2015, not only was known to the petitioner, but also, clearly accepted by the petitioner. He submits that these orders were significantly relevant and were need to be subsisting when the Division Bench passed orders on PIL Writ Petition No. 26/2017. It is his submission that the Division Bench in its order dated 29 June 2015 in paragraph 37(ii) having categorically directed that the State of Goa (respondent no. 2 therein) shall take all measures to prevent the erosion of the bank and siltation of river Mandovi along the concerned land of respondent nos. 7 and 9, namely, the hotel. It was thus incumbent for all the authorities to comply with such directions by taking an appropriate decision in accordance with law. It is submitted that accordingly, the GCZMA heard the parties and after taking into consideration the expert material vide order dated 11 March 2021 has taken a decision considering the provisions of the Environment Protection Act and the Rules framed thereunder that the proceedings in respect of the retaining wall would stand discharged in terms of the decision taken in the 249th GCZMA meeting held on 18 February 2021. The relevant extracts of the order are required to be noted, which read thus:

"AND WHEREAS, in the meeting 249th GCZMA meeting held on 18/02/2021 it was decided as follows:

"In view of the direction passed by the Hon'ble High Court by Judgment dated 29/6/2015 in Paragraph 37 (ii) with respect to the measures to be taken to prevent the erosion of the bank and siltation of the river Mandovi along the concerned land of the Hotel, this Authority has sought for a Report from the WRD. The WRD has consulted an expert agency of the Union Ministry of Jalshakti, Government of India, namely Central Water and Power Research Station (CWPRS), Ministry of Jal Shakti, Government of India, Pune which possesses technical expertise in the field of coastal protection and specialises in conducting physical and mathematical model studies.

This Authority considered the Expert Report dated 10/09/2020 received from the Central Water and Power Research Station (CWPRS), Ministry of Jal Shakti, Government of India, Pune being 'Mathematical Model Studies on Hydrodynamics and Sedimentation for Demolition of Retaining Wall at Marriott Hotel, Goa submitted through the WRD. The report in conclusion states as follows:

- *The high river discharges and wave and oblique flow towards left bank due to land outcrop at Reis Magos fort site (right bank side) play major important roles in erosion of bank in the vicinity of Marriott hotel.*
- *Shifting of left bank would increase the curvature of river resulting in more erosion at the left bank.*
- *The demolition of existing wall would result in shifting of channel towards left bank and this would further worsen the situation of erosion as angle of oblique current would further increase and the wave forces would be borne by bank alone.*

The Authority consulted the Water Resources Department to clarify on the issue of retaining wall as per the abovementioned report. The Chief Engineer, Water Resources Department expressed serious concern over impact of removal of retaining wall on anti-erosion works in the vicinity viz at Youth Hostel, Sports Complex etc and cautioned the Authority on shifting of the retaining wall.

The CRZ Regulations also provide for "prohibition of land reclamation, bunding, disturbing the natural course of sea water with similar obstructions except those required for control of coastal erosion" and....

Considering the spirit of the directions of Hon'ble Bombay High Court at Goa, CRZ Regulations, reports of the expert body and the facts on the ground, the Authority observes that the removal of existing retaining wall may cause irreparable damage to the shoreline resulting in eastward shifting of the river and causing damage to sea-erosion prevention measures taken by the Water Resources Department, Govt. of Goa in the vicinity viz at Youth hostel, Campal Stadium, Bhagwan Mahavir Garden etc as has been observed by looking at old collapsed retaining wall of 1978 built by the Water Resource Department in front of the existing retaining wall under question. Therefore, in the interest of prevention of erosion of the shoreline and to protect the erosion prevention works put up by the Water Resources Department, Govt of Goa in the immediate vicinity of the structures, the Authority decides that the retaining wall should be left in the present condition and should be properly maintained.

The Authority directs that the Hotel shall not put the area between the retaining wall and the imaginary line drawn parallel to the HTL of 1991 as per the NCSCM

Report for any kind of commercial use. As a measure to clearly delineate this area, the Hotel shall erect bio-fencing at the imaginary line under the supervision of experts of the GCZMA.

The matter stands disposed."

Now therefore, the GCZMA in exercise of the powers conferred under Section 5 of the Environment (Protection) Act, 1986 (Central Act 29 of 1986) read with sub-rule (3) (a) of Rule 4 of the Environment (Protection) Rules 1986, and read with power vested with the GCZMA vide Order S.O. 3975 (E) dated 31/10/2019 issued by the Ministry of Environment & Forests, Government of India, hereby discharges proceedings in respect of retaining wall in property Hotel Goa Marriott Resort c/o V.M Salgaocar Corporation Pvt. Ltd, Salgaocar Centre, E 4, Murgaon Estate, Off Airport Road, Chicalim, Goa in terms of decision taken 249th GCZMA meeting held on 18/02/2021.

a) Further, Hotel Goa Marriott Resort c/o V.M. Salgaocar Corporation Pvt. Ltd, Salgaocar Centre, E 4, Murgaon Estate, Off Airport Road, Chicalim, Goa shall not put the area between the retaining wall and the imaginary line drawn parallel to the HTL of 1991 as per the NCSCM Report for any kind of commercial use.

b) As a measure to clearly delineate this area, the Hotel shall erect bio-fencing at the imaginary line under the supervision of experts of the GCZMA in terms of decision taken 249th GCZMA meeting held on 18/02/2021.

The proceedings are disposed off accordingly.

(emphasis added)

18. Mr. Rivankar submits that such decision taken by the GCZMA is fully in consonance with the directions of the Division Bench in its order dated 29 June 2015 passed in Writ Petition No. 333/1993 as noted by us here-before. Mr. Rivankar would also submit that in no manner the said directions referred in PIL Writ Petition No. 26/2017 were upset by the Supreme Court. It is his contention that in the clear facts of the case, both the orders were required to be read in conjunction and it cannot be the position that the authority would act in the manner complying with the order dated 24 August 2018 passed in PIL Writ Petition No. 26/2017 and at the same time, violate the directions as to the measures to prevent erosion of the bank and siltation of river Mandovi along the concerned land of respondent no. 4 being the prior directions issued in Writ Petition No. 333/1993. Accordingly, his contention is that the contempt petition on the face of it, is misconceived and untenable and in fact, it is an abuse of the process of the Court. He would submit that the contempt petition would thus deserve to be dismissed.

19. Mr. Sardessai, learned Senior Counsel for respondent no. 4 in supporting the contentions as urged on behalf of Mr. Lotlikar and Mr. Rivankar would submit that the contentions of the

petitioner of any contempt being committed by the respondents are not well founded. Mr. Sardessai would submit that the GCZMA after following proper procedure has taken a lawful decision dated 11 March 2021 and decided not to disturb the retaining wall and more particularly, which is in compliance of the directions of the Division Bench in Writ Petition No. 333/1993, when the Court had expressed a concern in regard to the measures to be taken by the State Government to protect the erosion of the bank and siltation of river Mandovi along the lands of the hotel. It is contended that such decision of the GCZMA is a reasoned decision which has taken into consideration every possible aspect including the environmental concern, as also the expert report in that regard, to come to a conclusion that there is no violation of the CRZ notification of 1991 so that the retaining wall needs to be disturbed. His contention is that the CRZ notification dated 19 February 1991 in paragraph 2(viii) clearly protects bunding for control of coastal erosion as also referred by the GCZMA, hence, to have a retaining wall is not a prohibited activity as contained in paragraph 2 of such notification. It would be relevant to note paragraph 2(viii) of the 1991 CRZ notification, which reads thus:

> *2. Prohibited Activities.*
>
> *The following activities are declared as prohibited within the Coastal Regulation Zone, namely:*

...

(viii) land reclamation, bunding or disturbing the natural course of sea water with similar obstructions, except those required for control of coastal erosion and maintenance or clearing of waterway, channels and ports and for prevention of sandbars and also except for tidal regulators, storm water drains and structures for prevention of salinity ingress and for sweet water recharge."

(emphasis added)

It is thus Mr. Sardessai's submission that it is not well founded for the petitioner to allege any intentional breach of the orders passed by this Court. It is hence submitted that the Petition be dismissed.

20. On the above conspectus, we have heard the learned Counsel for the parties and with their assistance we have perused the record.

21. We may at the outset observe that there is no manner of doubt that the petitioner's two proceedings, namely, Writ Petition No. 333/1993 decided by the Division Bench by its judgment and order dated 29 June 2015 and the second PIL Writ Petition No. 26/2017 decided by the Division Bench by its judgment and order dated 24 August 2018, were intricately connected. Both these

proceedings concerned the grievances of the petitioner qua the structures of respondent no. 4 (the hotel) whether were offending the CRZ Regulations. Thus, both the said judgments are required to be read in conjunction. In fact what we observe is that the directions in the first order dated 29 June 2015 have a direct bearing on the subsequent order dated 24 August 2018 on the second petition. It clearly appears that the petitioner was also not oblivious to this position. In fact, this is a categorical stand on behalf of the respondents and more particularly, in paragraph 7 of the affidavit filed by the Chief Secretary, which is not denied by the petitioner in the rejoinder affidavit much less, any specific denial. If this be so, there is a legal consequence which occurs by virtue of the directions as contained in the first order dated 29 June 2015 as noted above in regard to the erosion of the bank and siltation of the river Mandovi along the lands of respondent no. 4 becoming enforceable. These directions of the Court being binding on the respondents, the petitioner cannot assert to the contrary and contend that such directions in the said order have become redundant. In any event, as noted above the said directions in no manner whatsoever, even remotely were disturbed by the order dated 24 August 2018 as passed by the Division Bench in the PIL in question (i.e. PIL Writ Petition No. 26/2017). The petitioner also

does not argue so. On a query on this position, we have been informed by the learned Counsel for the petitioner that only the orders dated 24 August 2018 are to be seen, as there is an intentional breach of the directions contained in paragraph 93(II)(f) by non-removal of the retaining wall amounting to contempt of Court.

22. We are afraid to accept such contention for more than one reason. As noted by us above, and which is clearly to the knowledge of the petitioner that after the report of the NCSCM, the GCZMA had issued a show cause notice to respondent no. 4, on which all the parties including the petitioner were heard, and the observation of the NCSCM qua the hut and the part of the swimming pool was implemented as these structures were removed. Thus, a compliance of the direction of this Court qua these structures was attained.

23. However, insofar as the retaining wall is concerned, there is in fact, no quarrel, although, sought to be unwarrantedly created by the petitioner. The retaining wall was a matter of concern in the light of the specific directions of the Division Bench in the first order dated 29 June 2015 when it directed the State of Goa, on protection of the land along the concerned land of respondent no.

4 (the hotel) so as to prevent erosion and siltation. The petitioner was not only well aware but conscious that this obligation is required to be complied by the State of Goa being a specific direction of the Division Bench in its order dated 29 June 2015. This apart, the GCZMA invited the parties for a hearing on this issue. The petitioner was also called upon to participate, however, the petitioner appears to have only and only asserted non compliance of the observations of the NCSCM by the State of Goa and the GCZMA wanted to consider the ill effects of removal of the wall considering the peculiar position of the Mandovi river and the concern caused due to the river currents causing erosion and siltation, which was imminently to be avoided. In fact, it would bring about a damage if such erosion was not to be avoided.

24. As noted above, the GCZMA called for an opinion of the WRD (Water Resources Department), which was deliberated upon in several meetings held between the parties. A technical report of the Central Water and Power Research Station (CWPRS) was invited. Such scientific report observed thus:

> *"The scientific report has recorded that "the site is influenced by waves, tide and large river discharges and eaves play an important role in erosion of bank in the vicinity of Marriott hotel. This stretch is prone to erosion. Other major cause of erosion at the left bank is bending of river which is result of a large land outcrop*

towards Reis Magos Fort site (right bank site) and flow gets deviated towards the left bank, which can also be correlated with the number of protective/anti-erosion works implemented by the state since 1978 all along the left bank. The river has the tendency to move towards left bank due to sharp bend in the upstream. This oblique flow along with high river discharge combined with severe wave condition is the worst scenario for the bank near Marriot hotel. The demolition of wall would result in shifting of channel towards left bank and this would further worsen the situation as angle of oblique current would further increase. The peak currents near the Marriott hotel wall are of the order of 0.9 m/s. In addition to this, breaking and non-breaking waves exert huge thrust on the wall. After shifting the wall, the whole force would be borne by the bank resulting into further erosion. The distance of pillar of Marriott hall hardly remains at about 5m. The distance between imaginary line and wall footing would further be less. Shifting of left bank would not help in improving the hydraulic conditions in the river instead it may further worsen the situation as it will increase the curvature of bend in this region."

25. The said report of CWPRS concludes as under:

- *The high river discharges and wave and oblique flow towards left bank due to land outcrop at Reis Magos fort site (right bank side) play major important roles in erosion of bank in the vicinity of Marriott hotel.*

- *Shifting of left bank would increase the curvature of river resulting in more erosion at the left bank.*

- *The demolition of existing wall would result in shifting of channel towards left bank and this would further worsen the situation of erosion as angle of oblique current would further increase and the wave forces would be borne by bank alone.*

26. The GCZMA after hearing the parties including the petitioner passed an order dated 11 March 2021, as noted above deciding to retain the wall. It is however pertinent to note as to what was the stand of the petitioner before the GCZMA in the light of so much of technical and expert material was before the GCZMA on the need to have a retaining bund/wall along concerned land of respondent no. 4 (the hotel). The petitioner's stand as recorded in the GCZMA's order dated 11 March 2021 reads thus:

> *"15. Goa Foundation, the Complainant, argued earlier at length on the matter and in the written submission stated that that there are two directions to be complied by this Authority in compliance to the judgment passed by the Hon'ble High Court of Bombay at Goa vide order dated 29/06/2015 in WP No.333/1993 contained in paragraph 37 direction No.2 and 3 which pertains to prevention erosion of bank and siltation of river Mandovi and to take measures to provide access to the beach. Complainant further argument is that the direction No.2 & 3 of the Hon'ble High Court in the judgment dated 29/06/2015 pertains to State of Goa and not to the GCZMA and GCZMA cannot decide upon the same. The Directions issued in order dated 24/08/2018 passed in PIL WP 26/0217 by the Hon'ble*

High Court are to be complied by the GCZMA. The report called by the GCZMA from WRD with regards to retaining wall through outsource from CWPRS, Pune is entirely unwarranted. The retaining wall has been identified as violation of CRZ notification and had to be removed. The Hon'ble High Court had directed the Authority to demolish all the offending structures.

27. Further, most importantly, the decision of the GCZMA dated 11 March 2021 has not been assailed by the petitioner in any proceedings.

28. It is thus clear that the petitioner had no other stand except to confine its submission on the said order dated 24 August 2018 passed by this Court being binding on the State of Goa and not the GCZMA. According to the petitioner, hence, the GCZMA undertaking the exercise to find out whether the wall should be removed was unwarranted. This is also the contention in the present petition. Such contention of the petitioner to say the least is thoroughly misconceived as it overlooks that after the report of the NCSCM was received, the State of Goa had certainly raised a concern before the GCZMA in regard to the retaining wall, considering the directions of the Division Bench dated 29 June 2015 in Writ Petition No. 333/1993; and rightly so, as the retaining wall fell within the CRZ regulations on which only the GCZMA had an authority to consider any such issue and not the

State Government. A fair procedure was followed by the GCZMA to determine such issue which is clear from the detailed order dated 11 March 2021, by which the GCZMA has come to the conclusion that it is necessary to retain the wall to prevent soil erosion and siltation. Thus, such a decision to prevent damage to the environment as taken by the GCZMA cannot be a matter of any agitation by the petitioner who is stated to be canvassing an interest to protect the environment.

29. On the above backdrop, we may candidly observe that, we are somehow, aghast to note the grounds as set out in the Petition in alleging an action to be taken against the respondents, as serious as contempt of Court, not only against high ranking officials of the State Government but also private respondents. It would not require any authority to observe that the contempt jurisdiction of the Court is a serious jurisdiction and if it is to be invoked it has to be invoked in a responsible manner, more particularly when the respondents as arrayed to the present contempt petition are such high ranking officials discharging their public duties. A responsible litigant who invokes such jurisdiction, it is his/her first and foremost obligation to see that the Government machinery, as well as the Government officials, are not dragged into unwarranted proceedings, much less in contempt

proceedings. It cannot be that the high ranking Government officials are threatened by the sword of contempt proceedings, by any litigant, and without examining the core issue as to whether there is any intentional disobedience of the Court's orders.

30. We see that in the present proceedings the petitioner has invoked the contempt jurisdiction of this Court in an extremely casual nay reckless manner. We may observe that at the midst of the proceedings, we pointed out, such aspect of the matter to the learned Counsel for the petitioner. However, the learned Counsel for the petitioner submitted that there is sufficient case made out by the petitioner in pressing for adjudication of these proceedings and initiate contempt action against the respondents. We thus need to note the grounds as set out in the Petition alleging contempt, which to our surprise, do not unfold any case of an intentional disobedience of our orders. The said grounds read thus:

"GROUNDS

32. The petitioner is therefore approaching this Hon'ble Court under its contempt jurisdiction on the following grounds among others:

A. The original directions given in the original judgment dated 29.6.2015 required action to be taken within a period of six months. This is after 22 years of the petition being filed and being heard by this Hon'ble High Court.

After 6 months there was still no compliance with the directions of this Hon'ble Court by any of the authorities. The petitioner therefore filed an application to draw the attention of this Hon'ble Court to the matter, and even filed an earlier contempt petition.

B. The authorities ganged up together to frustrate the carrying out of this High Court's order and manipulated and submitted a compliance report (the first report) which showed/located the HTL in the river (and not on land, as required by the CRZ notification). This was challenged by the petitioner and the court, indicating its displeasure, set aside the report and directed a fresh report to be done.

C. A second time, the same cabal of officers brazenly plotted to ensure that the interest of the hotel would continue to be protected and succeeded in manufacturing another report (the second report) which again cast the HTL in the river. Naturally, the second report also came to the conclusion that no demolition was required.

D. The Court set aside the second report and directed the NCSCM to demarcate the HTL in terms of the original order of this High Court in W.P. No. 333/1993, but not before another year had passed.

E. No action was taken pursuant to NCSCM report. Instead the GCZMA now issued a show cause notice to the respondents inviting them to object. The opportunity was quickly seized and the hotel owners filed two detailed representations and were preparing for more.

F. The pattern of obstruction is clearly established in the conduct of the GCZMA in filing the first report and then filing the second report and then obstructing the

implementation of the third report by ensuring further delays in implementation of this Court's directions.

G. The Resp. Nos. 1 & 2 were directed and duty bound to implement the directions of this Hon'ble Court as head of the administration and the environment department respectively. The office of the Resp. No. 1was a respondent in the first writ petition and the subsequent writ petition. For reasons best known to him, the present incumbent has decided that he and his administration will not comply with the orders of this Hon'ble Court. Petitioner has therefore no other option but to move this contempt petition since contempt has occurred in more than abundant fashion as shown in the facts related in the petition.

31. A bare perusal of the grounds itself ex facie indicates that there is no contempt in the remotest manner, as argued at the Bar. In fact, a vague plea of a contempt would amount to an abuse of the process of law. It cannot be so casual.

32. Be that as it may, at the cost of precious judicial time, we have examined in depth as to whether there is any contempt/any intentional disobedience of the order dated 24 August 2018 passed by this Court. As we have observed in detail in the foregoing paragraphs, it is quite clear that the directions of the Division Bench of this Court in Writ Petition No. 333/1993 dated 29 June 2015 clearly imposed obligation on the State of Goa to take all measures to protect the bank and siltation of river

Mandovi along the concerned land of respondent no. 4 i.e. the hotel. There is no quarrel that the part of the swimming pool has been removed to confine the same to the requirements of the location as also, the hut has been removed. However, as far as the retaining wall is concerned, we find that a decision in that regard was certainly required to be taken considering the observations of NCSCM, and in view of the clear directions of the Division Bench in Writ Petition No. 333/1993 in its order dated dated 29 June 2015. Accordingly, the GCZMA had undertaken such an exercise wherein the report of the NCSCM was considered. As observed, the State of Goa is not the authority to take a decision in regard to the said directions of this Court. Parties were heard including the petitioner and a decision dated 11 March 2021 was taken, which in our opinion, is completely in consonance with the directions of the Division Bench in Writ Petition No. 333/1993.

33. Ms. Alvares, learned Counsel for the petitioner relied on the decision of the Supreme Court in **T.N. Godavarman Thirumulpad Vs. Ashok Khot & Another**[3]. There can be no quarrel on the observations of the Court in the celebrated decision. However, we are unable to appreciate as to how this decision would be applicable, in the facts and circumstances of the present case,

3 Contempt Petition (C) No. 83/2005

wherein the Court has emphasized the need to protect the environment by virtue of the directions as made by the Court in the first petition. Certainly in the present facts, erosion of the soil and siltation are environmental aspects, which were required to be safeguarded as observed by the GCZMA.

34. In the context of the Court's contempt jurisdiction, Mr. Lotlikar's reliance on the decision in **Dr. U.N. Bora's** case (supra) is well founded as the Supreme Court has clearly observed that the contempt jurisdiction is a powerful weapon in the hands of the Courts of law, but that by itself operates as a string of caution and unless, otherwise satisfied beyond reasonable doubt, it would neither be fair nor reasonable for the law Courts to exercise jurisdiction under the Act. It was observed that the contempt proceedings are quasi criminal in nature, and therefore, standard of proof required in these proceedings is beyond reasonable doubt. It was observed that it would rather be hazardous to impose sentence for contempt on the authorities in exercise of the contempt jurisdiction on mere probabilities. These observations were made referring to the earlier decision in **Hukum Chand Deswal Vs. Satish Raj Deswal**[4] and **Ram Kishan Vs. Tarun Bajaj**[5]. It

4 (2021) 13 SCC 166

5 (2014) 16 SCC 204

was also next observed that in order to punish a contemnor, it has to be established that disobedience of the order is "wilful". The word "wilful" introduces a mental element and hence, requires looking into the mind of a person/contemnor by gauging his actions, which is an indication of one's state of mind. It was observed that "wilful" means knowingly intentional, conscious, calculated and deliberate with full knowledge of consequences flowing therefrom and it excludes casual, accidental, *bona fide* or unintentional acts or genuine inability. It was thus observed that wilful acts do not encompass involuntarily or negligent actions and the act has to be done with a "bad purpose or without justifiable excuse or stubbornly, obstinately or perversely". The Court observed that wilful act is to be distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently and it does not include any act done negligently or involuntarily. Thus, necessarily there being a requirement of action with evil motive on the part of the contemnor, even if there is a disobedience of an order, such disobedience if is the result of some compelling circumstances under which it was not possible for the contemnor to comply with the order, the contemnor cannot be punished. These principles were certainly required to be borne in mind by

the petitioner in invoking the contempt jurisdiction of this Court in the present proceedings and vociferously pressing the petition.

35. The learned Counsel for the respondents are correct in contending that the directions of this Court in PIL Writ Petition No. 26/2017 dated 24 August 2018 in the facts of the case could not be read *dehors* the prior directions vide order dated 29 June 2015 in Writ Petition No. 333/1993 and in fact, the GCZMA has observed that the demolition of the wall would worsen the situation and hence for this purpose, it was found appropriate not to demolish the retaining wall as it would cause serious erosion as observed in the said order of the GCZMA and as rightly pointed out by the respondents. The remedy of the petitioner was to assail the decision of the GCZMA dated 11 March 2021 and certainly not to prosecute the present contempt petition.

36. Thus, we find no case whatsoever has been made out for proceeding against the respondents to entertain the contempt petition, accordingly, we dismiss this contempt petition. However, as we find ourselves persuaded to hold that this contempt petition is an abuse of the process of law, we cannot dismiss the contempt petition simpliciter, but it has to be dismissed with costs.

Accordingly, the contempt petition is dismissed with costs of Rs.50,000/-.

37. The petitioner shall deposit the costs of Rs.50,000/- with the Goa State Legal Services Authority within two weeks from the date on which copy of this order is made available. Ordered accordingly.

38. In view of the dismissal of the Contempt Petition, Miscellaneous Civil Application Nos. 150/2022, 64/2020, 198/2022 and 2119/2022 (F), do not survive and as such, stand disposed of.

BHARAT P. DESHPANDE, J. G.S. KULKARNI, J.

VAIGANKAR ESHA SAINATH Digitally signed by VAIGANKAR ESHA SAINATH Date: 2022.10.06 19:55:29 +05'30'

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High Court of Bombay at Goa
Porvorim - Goa

HIGH COURT OF BOMBAY AT GOA * PORVORIM-GOA *

R.No. 174
12-10-22

Received
12/10/2022

ANNEXURE 2

[S.L.P. without annexures]

IN THE SUPREME COURT OF INDIA

Order XXI Rule 3(1)(a)

(CIVIL APPELLATE JURISDICTION)

(Under Article 136 of the Constitution of India)

SPECIAL LEAVE PETITION (CIVIL) NO. _____OF 2023

(Arising out of the Impugned Judgment and final order dated 30.09.2022 passed by the Hon'ble High Court of Bombay at Goa, in Contempt Petition No 2 of 2020)

WITH PRAYER FOR INTERIM RELIEF

BETWEEN

POSITION OF PARTIES

	Before the Hon'ble High Court	Before this Hon'ble Court
The Goa Foundation, through its Secretary, Dr. Claude Alvares, age 74 years, having Regd. Office at Room No 7, Above Mapusa Clinic, Mapusa, Goa - 403507. Email id: goafoundation@gmail.com	Petitioner	Petitioner
VERSUS		
Shri Parimal Rai, Office of the Chief Secretary, Secretariat, Porvorim, Goa – 403521.	Respondent No. 1	Respondent No. 1
Shri Puneet Kumar Goel, Secretary [Environment], Secretariat, Porvorim, Goa – 403521.	Respondent No. 2	Respondent No. 2

Shri Johnson Bedy Fernandes, Member Secretary**,** The Goa Coastal Zone Management Authority, 1st Floor, B-Wing,Pandit Deendayal Upadhyay Bhavan,Pundalik Nagar, Alto - Porvorim, Bardez, Goa – 403521.	Respondent No. 3	Respondent No. 3
V.M. Salgaocar Corporation Private Limited, having its registered office at Salgaocar Centre, E4, Murgaon Estate, Off Airport Road, Chicalim, Goa – 403711.	Respondent No. 4	Respondent No. 4

All parties are contesting

To

THE HON'BLE THE CHIEF JUSTICE OF INDIA
AND HIS COMPANION JUSTICES OF
SUPREME COURT OF INDIA

THE HUMBLE PETITION OF THE
PETITIONER ABOVE NAMED

MOST RESPECTFULLY SHOWETH:

1. The Present Special Leave Petition is being filed under Article 136 of the Constitution of India against the Impugned Judgment and final Order dated 30.9.2022 passed by the Bombay High Court at Goa in Contempt Petition No.2/2020, whereby the Hon’ble Court dismissed the Contempt Petition with a direction that Rs. 50,000 costs to be paid by the Petitioner. The Petitioner paid the costs without prejudice to file the present SLP.

2. **QUESTIONS OF LAW:**

The following questions of law of public importance arise for consideration by this Hon'ble Court in the present petition:

I. Whether the Hon'ble High Court was right in dismissing the Contempt Petition, when the direction issued by the Hon'ble High Court was yet to be fully executed by the Respondents, the result which, two considered orders of a constitutional court in two judgments and orders have been disrespected and kept permanently in abeyance, if not cancelled, depriving the public of access to all areas of a public beach, which is an unprecedented situation.

II. Whether the Hon'ble High Court was right in imposing costs of Rs.50,000 on the Petitioner, when it was clear from the record that the Petitioner was merely bringing to the notice of the High Court that its second judgment and order seeking to implement the directions passed in the first judgment and order was not complied with, and as subsequent events showed the Respondents had unilaterally taken a decision not to carry out the direction of the Hon'ble Court by procuring a fresh report which according would be treated as contempt?

III. Whether the High Court ought to have castigated the Petitioner for joining "high functionaries" like the Chief Secretary as respondents, when in fact these officers were Respondents in the original petition in which orders were passed and they disobeyed, and it is those acts of omission and commission of these Respondents that frustrated the implementation of the High Court's directions and consequently they were necessary parties and it was the duty

of Petitioner to inform the Court when its directions are not complied with, leaving it to the discretion of the High Court to grant the Respondents time to remove the alleged contempt or to issue notice of contempt.

IV. Whether the Petitioner could be visited with costs despite the fact that the High Court itself, already dismayed over non-implementation of its earlier orders in the matter, had issued a direction that any further inaction in violation of its orders would be treated as contempt of court.

V. Whether the High Court ought to have imposed costs on the Petitioner when it was clear from the record that the High Court had itself granted time repeatedly to the Respondents to carry out the Court's directions, and furthermore, it was obvious that only because the contempt was filed that two of the three structures were demolished.

VI. Whether approaching a High Court with a contempt Petition can be visited with costs when there is no other recourse available to seek implementation of the Court's directions and Petitioner had not only a right but a duty to file a contempt petition in such circumstances, especially as the matter concerns an issue of public interest, viz., recovery of a beach for the public's use and enjoyment.

VII. Whether the High Court, even if it had good reason, could not have dismissed the CP without imposing costs?

VIII. Whether the High Court was right in permitting the Goa Coastal Zone Management Authority to subvert and bypass its direction with a subsequent report when the High Court had already divested the GCZMA from any further involvement in the proceedings due to its sorry collusive

conduct with the respondent hotel in the same matter in the past?

IX. Whether in contempt jurisdiction, the High Court could cancel a direction given by two considered judgments of the same High Court and directions issued after detailed final hearings of both petitions on merits?

X. Whether the GCZMA ought not to have sought the leave of the High Court to delay the execution of its directions as it intended to carry out a study about the possible consequences of demolishing the compound wall inorder to determine whether the Court's direction was sound / correct?

XI. Whether the State Govt through the Chief Secretary could have accepted the decision of the GCZMA not to demolish the compound wall of the hotel, without first applying to the High Court to seek modification of its direction to eliminate all structures constructed in violation of the CRZ Notification and restore the area to its original status?

XII. Whether the High Court in its impugned order could accept the argument of erosion of the beach when this specific argument had already been rejected by its judgment dated 24.08.2018 and by the NCSCM as well, after receipt of representation from the respondent hotel pursuant to order of this Hon'ble Court dismissing the respondent Hotel's SLP?

3. **DECLARATION IN TERMS OF RULE 3(2):**

The Petitioner states that no other Petition seeking leave to appeal has been filed by it against the impugned Judgement

and Order dated 30.9.2022 of the Bombay High Court Bench at Goa in Contempt Petition No.2/2020.

4. **DECLARATION IN TERMS OF RULE 5:**

The annexures P-1 to P-13 produced along with the Special Leave Petition are true copies of the Pleading/ documents which form part of the records of the case in the High Court against whose order the leave to appeal is sought for in this petition.

5. **GROUNDS**

The Petitioner is filing the present SLP under Article 136 of the Constitution against the impugned judgment on the following, amongst other grounds, which are without prejudice to each other: -

Petitioner had no choice but the duty to file the Contempt Petition

I. BECAUSE the High Court ought to have appreciated that the Petitioner had filed two writ petitions before filing the Contempt Petition, wherein the first judgment and order found that there were three constructions, including a wall, on the public Gaspar Dias beach in Panaji city, erected in violation of the Coastal Regulation Zone (CRZ) Notification, and in the second judgment there was an order directing the removal of offending constructions identified by the National Centre for Sustainable Coastal Management (NCSCM), failing which, it would be treated as contempt.

II. BECAUSE the Contempt Petition specifically drew the attention of the High Court to the aforesaid specific

direction issued by the High Court itself and the fact that the two judgments and orders had not been complied with by the stipulated date by the authorities named in the judgment and order.

III. BECAUSE the Petitioners had no alternative but to approach the High Court as there was glaring evidence in the case that the contempt should not continue to frustrate the directions issued by the High Court in public interest.

IV. BECAUSE ordinarily the Petitioner cannot prove contempt in the manner laid down in para 34 of the impugned judgment as contempt is an issue for the Court to decide. The contempt Petitioner can only bring facts relating to the non-compliance of an order to the notice of the Court trying contempt. In the present instance, there was a specific direction of the High Court direction that, given the past conduct of the authorities, inaction on the part of the Respondents would be treated as contempt. Thus, the Petitioner was acting pursuant to a specific direction of the High Court in filing the contempt petition.

V. BECAUSE a diligent Petitioner is duty bound to initiate contempt proceedings when orders of the court are not carried out as directed, more so in cases of public interest matters, where invariably, as a matter of practice, the Court first gives opportunity to the alleged contemnor to comply and thereby purge the contempt, which opportunity was granted by the Court in these proceedings and in the interim, two out of three constructions identified by the NCSCM were removed, several months after the contempt petition

was filed which was admitted by the High Court itself, thereby resulting in the partial success of the Contempt Petition.

Disparaging remarks against the Petitioner dismissing the Petition and imposing costs were unwarranted

VI. BECAUSE in view of the fact that the Petitioner was acting on the direction of the High Court in the second judgment and taking care not to file Writ Petition after the first judgment and filing it only after the direction of the High Court to treat non-compliance as contempt, there cannot be a finding of "*abuse of the process of law*" on the part of the Petitioner and it certainly cannot be penalized with costs in such circumstances.

VII. BECAUSE in view of the aforesaid there was no warrant for dismissal of the Contempt Petition.

VIII. BECAUSE in any event the Court could have dismissed the contempt petition without awarding costs or charging the petitioner with abuse of process of law.

IX. BECAUSE in the circumstances the finding in the impugned judgment that the Petitioner was "*guilty of abuse of process of law*" and imposition of costs imposed on the petitioner need to be set aside.

Challenge to the GCZMA Report not necessary

X. BECAUSE the High Court erred in holding that the Petitioner ought to have challenged the GCZMA decision which sought to allow the third CRZ violation and not

continued to prosecute the Contempt Petition. The High Court ignored the fact that the Contempt Petition was filed soon after the period provided in the order for compliance had ended (4 weeks). In other words, contempt had already committed the moment the period of 4 weeks ended and was continuing and therefore the Contempt Petition could not have been dismissed on this ground alone. Time had been granted by the Court only to carry out the directions of NCSCM. They were not carried out. Therefore the Petitioner had no choice but a duty to file the Contempt Petition.

XI. Instead of complying with the order of the High Court to remove the offending constructions, a decision was taken by the GCZMA on 11 March 2021 (more than a year after the Contempt Petition had been filed) not to execute the direction. There was no subsequent order of the High Court modifying the directions in its judgment. Thus, the decision of the GCZMA was, *ex facie*, in contempt of the order of the High Court.

XII. BECAUSE in fact, the entire exercise conducted by the GCZMA was a repeat of its two earlier attempts to protect the Respondent hotel's interest, both of which had been set aside by the High Court.

XIII. BECAUASE the Petitioner was not required to challenge an report produced by the GCZMA, as there was no leave from the High Court. The Petitioner had succeeded in two writ petitions on all counts, each case resulting in detailed judgments, elaborately setting out the reasons why the illegally constructed structures needed to be demolishedas a

result of which the GCZMA's intent to frustrate the Court's directions.

XIV. BECAUSE the Petitioner was only required to show that a decision had been deliberately and wilfully taken contrary to the direction issued by the High Court which action constituted contempt, but not an action to set aside by Petitioner to set aside the order of the GCZMA by moving a fresh writ petition.

Erosion of beach already decided

XV. BECAUSE the High Court could not have relied upon the argument based on erosion of the beach when the said issue had already been considered and rejected by the High Court in its judgment dated 24.08.2018 and by the NCSCM pursuant to dismissal of the SLP filed by the Respondent hotel. If the State of Goa was keen about erosion of the beach, it has no explanation as to why it did nothing on this issue from 2015 till the year 2021 that too, only after it became clear that demolition of the wall was inevitable.

The GCZMA had no role to play except implement the orders of the High Court

XVI. BECAUSE it had been noted by the High Court in both judgements for which reason the High Court, in scathing remarks, had ousted GCZMA from any further role in the implementation of the Court's directions. Thus the matter had already been concluded with a second judgment, appeal against which was also rejected by this Hon'ble Court. Only the execution of the order remained. Hence the Petitioner was right in not further contesting any new and illegitimate

report produced by the GCZMA, that too after receipt of the NCSCM report.

XVII. BECAUSE the High Court ought to have appreciated that it was due to display of rank collusion between the GCZMA and the Respondent Hotel that the High Court had divested the GCZMA from any further involvement in the matter of the CRZ violations of the hotel. If at all there was a role to play by the GCZMA, it was solely to implement the NCSCM's directions which the GCZMA refused to do. Instead the GCZMA again got involved in the matter ostensibly on the basis of the erosion of the beach to ultimately defeat orders and directions of the High Court which itself constituted contempt of the orders of the High Court.

XVIII. BECAUSE the High Court in the impugned judgment erred in:-

i) Not questioning the conduct of the Respondents which from 2015 itself showed intentional delays and attempts to obstruct and subvert.

ii) Not heeding the directions of the second judgment divesting GCZMA of any further active involvement in the matter.

iii) Not appreciating the reason why the matter had been taken over and handed over to the NCSCM.

The High Court's directions could not be undone by an Executive authority

XIX. BECAUSE the High Court ought to have appreciated that a direction issued by a Constitutional court cannot be undone by a statutory authority on an entirely new ground without seeking the leave of the High Court.

XX. BECAUSE the NCSCM identified and marked on a map the degree and extent of CRZ violations. Two of the three structures identified by NCSCM were in fact removed, albeit several months after the period given in the order had already been well exceeded.

XXI. BECAUSE the GCZMA could not have unilaterally taken a decision to violate explicit and time bound decisions and directions of a constitutional court, which had become final and against which SLP filed had been dismissed.

XXII. BECAUSE the High Court appeared not to notice that the second judgment of the High Court was not varied by the Supreme Court in appeal, but instead the Court permitted the Respondent hotel to make representations before the NCSCM, which was the final authority to decide on the structures required to be demolished whereupon the Respondent Hotel did present its argument of erosion of the beach before the NCSCM, which was rejected.

XXIII. BECAUSE the Court needed to appreciate that the second judgment was passed because the direction given in the first judgment remained unimplemented.

XXIV. BECAUSE two different benches of the High Court were thus of the view that the structures which impeded access of the public to the beach needed to be removed so that the law to protect the environment and the Public Trust Doctrine is strictly enforced. Dismissal of the contempt petition without execution of the directions in the judgment amounts to the earlier judgments being modified by the Court exercising contempt jurisdiction, which has no jurisdiction to so do.

XXV. BECAUSE once the directions of the High Court, upheld by the Supreme Court had the attained finality, they could no longer have been varied by any executive or statutory authority.

XXVI. BECAUSE the Respondent Hotel had also filed an SLP against the second judgment which was rejected by this Hon'ble Court, on the ground that the party was free to approach the NCSCM with its submissions (which it did).

XXVII. BECAUSE the GCZMA was duty bound to seek modification of the Court's directions to pursue its course of action, if it indeed could, since the matter had become final after the Respondent hotel's SLP was rejected by the Supreme Court. It could never have avoided implementation of the High Court's order unless it had obtained an order from this Hon'ble Court.

The NCSCM had found 3 offending constructions in the CRZ.

XXVIII. BECAUSE the NCSCM had found 3 offending constructions in the CRZ. The High Court's order of 2018

required the removal of all 3. It was because of the Contempt Petition that two offending structures were removed. Till the third structure (compound wall on the public beach) was removed, the contempt petition was maintainable and needed to be prosecuted.

XXIX. BECAUSE the High Court had to decide whether the decision of the GCZMA dated 11.3.2021 allowing the construction despite the finding of NCSCM and its own directions was acceptable conduct and not amount in contempt of the High Court's directions.

Principles of natural justice violated

XXX. BECAUSE the High Court was duty bound to inform the Petitioner of its intention of the finding that it arrived at against the Petitioner and to hear the Petitioner separately on the issue before passing its order. In the circumstances, the findings made against the Petitioner and the penalty imposed by way of costs are in violation of the principles of natural justice.

XXXI. The adverse findings against the Petitioner and penalty levied in terms of costs are not only painful for an organization like the Petitioner, with a unblemished history of yeomen service to the community in Goa for over 30 years, to bear, both in terms of money and in terms of its huge reputation.

The High Court in contempt jurisdiction had no competence to go into the issue of erosion

XXXII. BECAUSE based on affidavits made by the Respondents and the experts cited by them, the High Court, firstly wrongly got into the issue of erosion in the contempt proceedings and secondly committed an error of accepting the argument that removal of the wall would lead to environmental degradation.

XXXIII. The issue of erosion was first used to justify adopting of a different high tide line in the second GCZMA report, and was dismissed explicitly by the second judgment.

XXXIV. The erosion argument was also raised in the SLP, and thereafter, before the NCSCM. However, it was rejected in both proceedings.

XXXV. It is only after the NCSCM report that the hotel and the GCZMA began taking recourse on grounds of erosion, i.e., on a fresh ground, linking it for the first time with the second direction provided in the first judgment. Before the NCSCM report, this had never been a considered either by the GCZMA or the Respondent Hotel. As can be seen from the dates, the move to call up the second direction to sabotage the first was made only after the NCSCM report was received and the structures to be demolished were clearly identified. The decision of the GCZMA was finalized in 2021. All parties were already in contempt 4 weeks after the receipt of the NCSCM report in August 2019. All actions thereafter could only be continuation of contempt.

XXXVI. BECAUSE if the Court was of the opinion that no contempt had been committed by the refusal of GCZMA to demolish the wall, it could have simply dismissed the contempt petition

XXXVII. BECAUSE in contempt jurisdiction the Court could not alter the original judgment of 2018 revised, which is what it has done in effect.

XXXVIII. BECAUSE in contempt jurisdiction the Court can only go into whether there has been wilful and deliberate non-compliance of a courts order. It could not go into the merits of the earlier decision and purport to alter it, which the impugned judgment has done, without explicitly varying the original two judgments.The result is that, and the record now shows, that there exists a direction of the High Court to demolish the wall, which was upheld by this Hon'ble Supreme Court, but which remains unimplemented.

XXXIX. BECAUSE two judgments in writ jurisdiction have upheld demolition of the compound wall directly or indirectly, whatever the consequences, which has been upheld by this Hon'ble Court. The High Court in contempt jurisdiction could not to nullify the order passed in writ jurisdiction which the impugned order has done. As a result impugned judgment in a contempt jurisdiction has rendered both judgments writ jurisdiction worthless in respect of a specific CRZ violation.

XL. BECAUSE the High Court committed an error in holding that the Contempt Petition was vague, casual and reckless which finding was rebutted by the High Court itself when it quoted the grounds raised in the contempt petition in para 30 of the impugned judgment. None of the grounds raised in para 30 are casual or reckless and none is wrong in fact

or law. All grounds were raised in defence of the High Court's orders dated 2015 and 2018.

XLI. BECAUSE both the first directions issued in both judgments dealt with the issue of addressing the CRZ violations. The Court, by its dismissal of the Contempt Petition now holds that the second direction in the first judgment overrides both the first directions in both judgments which defies logic and implies that the first judgment directed demolition and then put in a second direction to veto the first direction. This is wholly incorrect, as the first judgment clearly included the swimming pool and compound wall in the list of prima facie violations.

XLII. At no stage did the judgment require the authorities not to remove the wall even if it would assumedly lead to erosion of the beach.

XLIII. There cannot be a finding in a contempt petition that can grant legitimacy to an illegal wall. Till date, the wall remains illegal. A judgment in a contempt petition cannot confer legality to something which has been held to be illegal.

6. **GROUNDS FOR INTERIM RELIEF**:-

BECAUSE while passing the Impugned Order, the Hon'ble Court has dismissed the Contempt Petition with a direction that Rs. 50,000 costs to be paid by the Petitioner. The Petitioner paid the costs under protest, without prejudice to file the present SLP.

7. **MAIN PRAYER**

It is therefore, most respectfully and humbly prayed that this Hon'ble Court may be pleased to:

a) To grant Special Leave to Appeal against the impugned Final Judgment and Order dated 30.09.2022 passed by the Hon'ble High Court of Bombay at Goa in Contempt Petition No.2 of 2020;

b) Pass such further and other orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of this case.

8. **PRAYER FOR INTERIM RELIEF**

It is therefore, most respectfully and humbly prayed that this Hon'ble Court may be pleased to:

a) Stay the impugned Final Judgment and Order dated 30.09.2022 passed by the Hon'ble High Court of Bombay at Goa in Contempt Petition No.2 of 2020;

b) Specifically delete the remarks that the contempt petition was "an abuse of the process of law," and the Petitioner are to be visited with costs of Rs.50,000

c) Direct the refund of the sum of Rs. 50,000 with interest, paid by the Petitioner pursuant to the impugned order without prejudice to its rights to challenge the same

d) Pass such further and other orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of this case.

AND FOR THIS ACT OF KINDNESS THE APPELLANT AS IN DUTY BOUND SHALL EVER PRAY.

DRAWN BY:
MS. NORMA ALVARES, ADVOCATE

SETTLED BY:
MR. ANAND GROVER, SENIOR ADVOCATE

FILED BY:

(**NUPUR KUMAR**)
Advocate for the Petitioner

New Delhi
Drown on:- 31.12.2022
Filed on:- 05.01.2023

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (C) NO. OF 2023

IN THE MATTER OF:

THE GOA FOUNDATION PETITIONER

VERSUS

SHRI PARIMAL RAI & ORS. RESPONDENTS

CERTIFICATE

Certified that the Special Leave Petition is confined only to the pleadings before the Court whose order is challenged and the other documents relied upon in those proceedings. No additional facts, documents or grounds have been taken therein or relied upon in the Special Leave Petition. It is further certified that the copies of the documents/annexures attached to the Special Leave Petition are necessary to answer the questions of law raised in the petition or to make out grounds urged in the Special Leave Petition for consideration of this Hon'ble Court. This certificate is given on the basis of the instructions given by the Petitioner/person authorized by the Petitioner whose Affidavit is filed in support of the Special Leave Petition.

FILED BY:

(NUPUR KUMAR)
Advocate for the Petitioner(s)

NEW DELHI
FILED ON : 05.01.2023

NOTARY
Janardhan S. Parshekar
Mapusa Bardez - Goa
Regd. No. 218/10
Expiry Date
29/01/2025
GOVT. OF GOA (INDIA)

IN THE SUPREME COURT OF INDIA

(CIVIL APPELLATE JURISDICTION)

SPECIAL LEAVE PETITION (CIVIL) NO. _____ OF 2023

IN THE MATTER OF:

The Goa Foundation .....PETITIONER

VS.

Shri Parimal Rai & ors ...RESPONDENT

AFFIDAVIT

I, Dr Claude Alvares, S/o late Peter Alvares, aged 74 years, Secretary, the Goa Foundation, St. Britto's Apartments, Feira Alta, Mapusa, Goa-403 507, do hereby state and solemnly affirm as under:

1. That I am the Secretary of the Petitioner in this Special Leave Petition. As such, I am fully conversant with the facts of the case and thus capable of swearing to this Affidavit on my behalf and on behalf of the other Petitioners.

2. That I have read and understood the contents of the accompanying Special Leave Petition (Paras 1 to 8) and list of dates (Pages B to P), Annexures and Applications and I say that the contents therein are true to my personal knowledge and belief. That the annexures of the accompanying petition are true copies of their respective originals.

3. That the present affidavit is of the same or subsequent date of drafting of the Petition.

4. That no part of the present affidavit is false and nothing material has been concealed therefrom.

Solemnly affirmed at Mapusa, Goa,

This the 31st day of December 2022

THE GOA FOUNDATION Reg. No. 23/GOA/86

DEPONENT

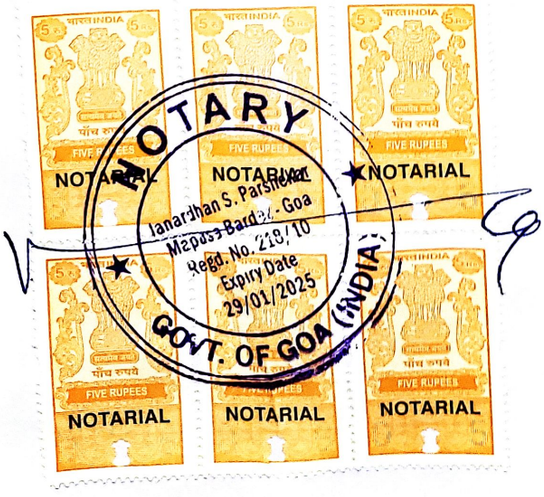
NOTARY Janardhan S. Parshekar Mapusa Bardez - Goa Regd. No. 218/10 Expiry Date 29/01/2025 GOA (INDIA)

SOLEMNLY AFFIRMED AND ASSERTED BEFORE ME BY Dr Claude Alvares AND IDENTIFIED BEFORE ME BY 6086/ 31/12/22

JANARDHAN S. PARSHEKAR
NOTARY AT MAPUSA, BARDEZ - GOA
STATE OF GOA INDIA

VERIFICATION

Verified at Mapusa, Goa on this the 31st day of December, 2022 that the contents of this affidavit are based on the information derived from the records and also on the basis of the information received and believed to be correct. No part of it is false and nothing material has been concealed or suppressed there from.



THE GOA FOUNDATION Reg. No. 23/GOA/86

DEPONENT

SOLEMNLY AFFIRMED AND ASSERTED BEFORE ME BY Dr Claude Alvares AND IDENTIFIED BEFORE ME BY 6086/ 31/12/22

JANARDHAN S. PARSHEKAR
NOTARY AT MAPUSA, BARDEZ - GOA
STATE OF GOA INDIA

ITEM NO.12 COURT NO.2 SECTION IX

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

SPECIAL LEAVE PETITION (CIVIL) Diary No(s). 953/2023

(Arising out of impugned final judgment and order dated 30-09-2022 in CP No. 2/2020 passed by the High Court Of Judicature At Bombay At Goa)

THE GOA FOUNDATION Petitioner(s)

VERSUS

PARIMAL RAI & ORS. Respondent(s)

(IA No.34003/2023-CONDONATION OF DELAY IN FILING and IA No.34002/2023-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Date : 28-02-2023 This petition was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE MANOJ MISRA

For Petitioner(s) Mr. Anand Grover, Sr. Adv.
Ms. Nupur Kumar, AOR

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

Delay condoned.

Learned counsel for the petitioner submits that the petitioner is a voluntary organization with 30 years of history and it is in pursuance to the contempt proceedings filed in question that two of the three offending structures were subsequently demolished. As far as the retaining wall is

Signature Not Verified
Digitally signed by Charanjeet Kaur
Date: 2023.02.28 17:38:20 IST
Reason:

concerned, it is submitted that though the petitioner may have different perception from what the concerned Court had taken, the petitioner will exercise its right to assail that order in accordance with law whether that retaining wall can or cannot be retained.

That leaves us only about the issue of costs. It is the submission of the learned counsel for the petitioner that there is no occasion to impose costs when it is only in pursuance to the contempt proceedings that the two structures have been removed.

In our view, cost is normally a discretion of the Court and we leave it to the petitioner to move the High Court pointing out the aforesaid facts seeking waiver of costs.

The special leave petition accordingly stands disposed of.

Pending application stands disposed of.

[CHARANJEET KAUR]
ASTT. REGISTRAR-cum-PS

[POONAM VAID]
COURT MASTER (NSH)

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF BOMBAY AT GOA
APPELLATE SIDE

MISC. CIVIL APPLN. NO. 190 OF 2017
IN
WRIT PETITIN. NO. 333 OF 1993

THE GOA FOUNDATION, THR. ITS
SECRETARY, DR. CLAUDE ALVARES ... Applicant

Versus

THE NORTH GOA PLANNING AND DEVELOPMENT
AUTHORITY, THR. ITS MEMBER SECRETARY
AND 8 ORS. ... RespondentS

None present.

REGISTRAR'S ORDER

By this application, the applicant prayed before the Hon'ble Court to direct the Registry to pay the costs to the petitioner as directed by the Hon'ble Court by it's order dated 29.06.2015 in Writ Petition No.333 of 1993.

2. By order dated 03.04.2017, the Hon'ble Court directed the Registry to compute the costs and place on record, in accordance with law.

3. By Registrar(Judicial)'s order/report dated 19.07.2018, it is observed that the Assistant Registrar has already computed the costs and prepared the bill of costs in Writ Petition No. 333/1993 on 29.06.2015. So, the matter was placed before the Hon'ble Court alongwith the bill of costs.

4. On 10.10.2018, the Hon'ble Court observed that, as the bill of costs has already been prepared, the Registry was directed to take necessary steps in furtherance of the same and the Civil Application was accordingly, disposed of.

5. In view of the above orders, the matter was again placed on the Registrar's Board. By application dated 24.01.2019, the Ld. Advocate for the applicant submitted that the costs as computed by the registry were to be paid to the petitioner but the costs are not yet paid, so she requested to take necessary steps in pursuance of the Hon'ble Court order.

6. On perusal of record, it is crystal clear that, as per the bill of cost computed by the Assistant Registrar, the amount of cost is Rs.370/- (Rupees Three Hundred Seventy Only) but till today, the said amount is not deposited in the Court. The Registrar(Judicial) can pay the costs only if an amount is deposited in the Court/Registry. In this matter, as costs are not deposited, the Registry is unable to pay the same.

7. It is just to reproduce the rules/procedure for executing the order, Chapter XVII Rule 21 of the Bombay High Court Appellate Side Rules, provides for execution of orders including cost. The said provisions runs as follows.

> "21. Drawing up of order including cost. Every order passed on Civil applications under Article 226 of the Constitution including any order as to costs, shall be drawn up as if it were a decree and shall be executable as a decree in the manner provided in the Code of Civil Procedure.
>
> 22. Applications under section 82, Civil Procedure Code. (i) Applications under section of the Code of Civil Procedure for making a report of non-satisfaction to the State Government of any order or decree passed in any Civil Application under Article 226 of the Constitution shall be supported by an affidavit of the applicant and shall be accompanied by a certified copy of the decree or order.

(ii) Applications under the above sub-rule shall be heard and disposed of by the Registrar.

(iii) If the Registrar is satisfied that the order or decree is not satisfied within the time specified therein and that the execution of the order or decree is not barred by any provision of law, he may make a report of non-satisfaction to the State Government.

23. Execution of order or decree on Original Side. Any order or decree in a Civil Application under Article 226 of the Constitution passed on the Appellate Side and the non- satisfaction of which has been reported to the State Government under the preceding rule may be transmitted to the Original Side of this Court for execution and, if so transmitted, shall be executed in accordance with the procedure prescribed for execution of decrees and orders passed in the exercise of the Ordinary Original Civil jurisdiction of this Court.

Explanation : An order or decree in a Civil Application under Article 226 of the Constitution of India, decided at the Benches at Nagpur, Aurangabad and Panaji will be transmitted to the Court of competent civil jurisdiction for execution.] "

8. So, in view of the above rules an application under section 82 of C.P.C. must be preferred for making report of non-satisfaction to the State Government of any order or decree passed in any Civil Application under Article 226 of the Constitution shall be supported by an affidavit of the applicant, and shall be accompanied by a certified copy of the decree or order. Such application shall be heard and disposed of by the Registrar. If non satisfaction is reported to the Government then it has to be

transmitted to the Court of competent Civil jurisdiction for execution, as per explanation to Rule 23.

10. The applicant/petitioner is at liberty to avail the remedy to Rule 21,22 and 23 of the Chapter XVII of the Bombay High Court Appellate Side Rules, 1960. As the Hon'ble Court has already disposed of this application and this application is not under rule 21 to 23 of the Bombay High Court Appellate Side Rules, 1960, nothing remains, to proceed further.

Date: 14th February, 2019

(Kiran A. Bagi)
Registrar(Judicial)

ANNEXURE 5

IN THE HIGH COURT OF BOMBAY AT GOA

MISC.CIVIL APPLICATION NO. 274 OF 2016
IN
WRIT PETITION NO. 333 OF 1993

THE GOA FOUNDATION THR. ITS SECRETARY, DR CLAUDE ALVARES. ... Applicant

Versus

THE NORTH GOA PLANNING AND DEVELOPMENT AUTHORITY THR. ITS MEMBER SECRETARY AND 8 ORS., ... Respondents

Ms. Norma Alvares, Advocate for the applicant.
Mr. S. D. Lotlikar, Advocate General, with Mr. D. Lawande, Additional Advocate General with Ms. P. Bhandari, Additional Govt. Advocate for the respondents No.1 to 4.
Mr. Rafiq Dada, Senior Advocate with Mr. J. P. Supekar, Advocate for the respondent No.7 & 9.

Coram:- F. M. REIS &
NUTAN D. SARDESSAI, JJ.

Date:- 24th October, 2016

P.C.:

Additional affidavits filed on behalf of the respondents no.1 and No.7.

2. Heard Ms. Norma Alvares, learned Counsel appearing for the applicant, Mr. S. D. Lotlikar, learned Advocate General appearing for the respondents No.1 to 4 and Mr. Rafiq Dada, learned Senior Advocate appearing for the respondent No.7.

3. Writ Petition No.333 of 1993 was disposed of by this Court

vide Judgment dated 29th June, 2015, inter alia, issuing the following directions :

(i) The respondent nos. 1 to 4 or any other designated competent authority shall proceed to examine whether any of the construction activities carried out by the respondent no.7 comes towards the river side of the imaginary line to be drawn from the Light House shown in the plan of the Court Commissioner parallel to the High Tide Line in the manner as stated herein above and thereafter proceed to take necessary action against the respondent no.7 for restoring such area in accordance with law within six months from today.

(ii) The respondent no.2 shall take all measures to prevent the erosion of the bank and siltation of the river Mandovi along the concerned land of the respondent nos.7 and 9.

(iii) The respondent nos.7 and 9 shall not obstruct the access of the public to the subject beach through the said reserved path and the respondent no.2 shall take all measures to make such path accessible to the said beach in accordance with law.

4. An application was filed by the petitioner, inter alia, raising a grievance that despite of such directions, no effective measures were taken by the concerned respondents in complying with the directions issued while disposing of the said petition. Thereafter, the respondent No.3 filed a report contending that the directions in the said Judgment have been duly complied with. But, however, the

learned Counsel appearing for the petitioner has disputed such report and pointed out that the directions have not been complied with in terms thereof.

5. Mr. Lotlikar, learned Advocate General appearing for the respondents No. 1 to 4 submitted that this Court while passing the said Judgment did not have enough material to locate the High Tide Line (HTL) of the river and the directions were issued to the concerned Authorities to identify the HTL and draw the imaginary line parallel to such HTL from the authorised structure which was stated to be the Light House and therefore take necessary action in accordance with law with regard to any construction actives located towards the river side of such imaginary line. It is further pointed out that experts were appointed to examine and identify the HTL of the river and as such, according to him, it was found that there was no structure on the river side of such imaginary line drawn by such experts. The learned Advocate General has also taken us through different portions of the Judgment to point out that the decision to examine whether any constructions are contrary to the CRZ Regulations was left to be taken by such Authority.

6. Mr. Rafiq Dada, learned Senior Advocate appearing for the respondent No.7 & 9 has submitted that the HTL has to be constituted as in existence as on the date of the coming into force of the CRZ Notification in February, 1991. The learned Senior Counsel

submits that according to the land records, there was some erosion of land which has been duly examined by the experts while preparing such report.

7. Ms. Norma Alvares, learned Counsel appearing for the petitioner, however, points out that the HTL would have to be examined in terms of the Environment Protection Act by the Authorities constituted thereunder to carry such an exercise. It is further pointed out that the directions issued by the Chief Secretary-respondent No.2 to comply with the directions as contained in the said Judgment in a particular manner have not been followed by the Committee which had submitted the report. The learned Counsel has, thereafter, taken us through the report to point out that the report is totally contrary to the directions issued by this Court whilst disposing of the writ petition.

8. Upon hearing the learned Counsel appearing for the respective parties, we find that this Court had in fact indicated the manner in which the exercise has to be carried out in paras 28, 34 and 35 of the said Judgment. This Court had also observed that such an exercise would have to be carried out by the GCZMA which was the Authority constituted under the Environment Protect Act to examine environmental issues. In such circumstances, we find that constituting a Seven Member Committed, keeping aside the GCZMA by the concerned respondents is not at all justified. As rightly

pointed out by the learned Counsel appearing for the petitioner, the HTL would have to be identified in terms of the directions issued by this Court in the said Judgment.

9. In such circumstances, we are not inclined to accept the report filed by the respondents which is stated to be in compliance with the directions issued by this Court in the said Judgment as the directions issued are not in conformity of our Judgment. As such, we direct the GCZMA duly constituted under the Environment Protect Act, to comply with the directions issued by this Court in the said Judgment dated 29/06/2016 in Writ Petition No.333/1993. Needless to say, the HTL would have to be identified in accordance with the Environment Protect Act, 1986 and the CRZ Notification of 1991, within three months. It is made clear that we have not conclusively examined the correctness of the report though, on bare perusal of the said report, the exercise has been carried out on the basis of the High Water Line, which was not the direction issued in the said Judgment.

The application stands disposed of accordingly.

NUTAN D. SARDESSAI, J. F. M. REIS, J.

ssm.

Amrut

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.333 OF 1993

The Goa Foundation & Anr ...Petitioners
Versus
The North Goa Planning & Development Authority & Ors Respondents

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Ms N Alvares, *Advocate for the Petitioners.*
Mr HD Naik, *Advocate for Respondent No 1.*
Mr Dattaprasad Lawande, *Advocate General with Ms P. Bhandari, Addl. Government Advocate for the Respondent Nos 2, 3, 4 and 6.*
Mr N Sardessai, *Senior Advocate with Mr Firdosh Pooniwalla, Mr Rishit Badiani, Mr J Supekar and Mr D Pangam, Advocates for the Respondent Nos 7 & 9.*

CORAM: **G.S. PATEL &**
NUTAN D. SARDESSAI, JJ
DATED: 21st August 2017

PC:-

1. We have now heard Ms Alvares for some time on the final report approved in the meeting of 1st August 2017 of the Goa Coastal Zone Management Authority. Mr Lawande has helpfully compiled several orders and this report, to which is annexed a map at page 131 of that compilation. We propose to use this material in future as well.

2. We understand Ms Alvares' submission to mean that the present report of 1st August 2015 is in no way in compliance with the direction No (i) of the judgement of 29th June 2015, one that disposed of the principal Writ Petition No 333 of 1993. It is also her complaint that the order of 29th June 2015 was itself 22 years in the making, and it is simply unthinkable that after that kind of time and expense there should be a report of the kind that was presented on 1st August 2017. Specifically, her grievance is that the adoption of some so-called historical High Tide Line ("**HTL**") is unwarranted by either the statute, or by any directions in, or any part of, the judgement dated 29th June 2015. We understand her submission to mean that this Court in that judgement accepted the HTL. It directed the demarcation of an 'imaginary line' from the light house in the north parallel to the HTL. Correctly drawn, that imaginary line would be 24.5 meters inward from the point marked 'A' on the map annexed to the present report of 2017. There was never any reason, she submits, to 'demarcate' the HTL. The HTL is defined in the Coastal Area Zone Notification of 1991 ("**CRZ Notification**") as the point of the highest of the annual (spring) high tides. That HTL was thus known to all, and it was known to all for every coastal stretch of Goa. The HTL in this case is nothing but the retaining wall in front of the 7th Respondent's hotel. The imaginary line would be parallel to this, inland by a distance of 24.5 metres. Any construction beyond this imaginary line by the 7th Respondent is therefore vulnerable and liable to orders of demolition.

3. We have seen the directions in para (i) of para 37 of the Judgement of 29th June 2015. The plan annexed to the 1st August

2017 report does not presently supports Ms Alvares' submissions. It does show a HTL and imaginary line, but it uses data as of 1991 when the CRZ Notification came into force, and of even earlier. The 7th Respondent's construction started in November 1991. The report therefore indicates that no part of the 7th Respondent's hotel is towards the Mandovi river of the imaginary line, that is to say beyond the imaginary line to the river side.

4. Necessarily, this conflict postulates a challenge to the 2017 report itself. We do not think this was in contemplation in the order of 29th June 2015. Indeed, the judgement seems to us to indicate that it could be no such controversy about the either HTL or imaginary line. Once the imaginary line was established, the rest would follow as a matter of course, because it was then only a question of physical measurement. What we have instead today is a substantive challenge to the correctness of the GCZMA's 2017 report. We are unable to see how we can enter into this controversy in a disposed of Writ Petition, or how we can entertain it in contempt jurisdiction either. Both avenues are vulnerable.

5. We do appreciate the Petitioners' efforts in pursuing their cause. It is not our intention to add to their burdens. At the same time, we cannot, simply because this is a PIL, slip our judicial moorings and cast ourselves adrift by hearing such objections, even if they are perfectly valid, which we have yet to test, without an underlying application or petition.

6. We leave it to the Petitioner to bring before this Court, should they be so inclined, an appropriate and maintainable application or petition that addresses the issues involved, including those Ms Alvares has addressed today. We will, however, allow the present compilation to be used a reference in any further proceeding the Petitioners may bring.

7. While we heard Ms Alvares at some length, we have not yet heard Mr Lawande or Mr Sardessai for Respondent Nos 7 and 9. The reason is the same: we have no base proceeding in which to hear them, and they have no accurate or identified proceeding to which they can address themselves. We have also today merely set out in summary Ms Alvares' submissions as we understood them. We have not examined these on merits. All contentions on the 2017 GCZMA report are, therefore, left open.

8. At this stage no further orders are necessary.

9. Should the Petitioners file such a proceeding, liberty to mention for circulation.

NUTAN D. SARDESSAI J. **G. S. PATEL J.**

SLP(C) 33743/2018

ITEM NO.14 COURT NO.1 SECTION IX

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No.33743/2018

(Arising out of impugned final judgment and order dated 24-08-2018 in PILWP No. 26/2017 passed by the High Court of Judicature at Bombay at Goa)

VMSALGAOCAR CORPORATION PVT. LTD. Petitioner(s)

VERSUS

THE GOA FOUNDATION & ORS. Respondent(s)

(For interim relief)

Date : 11-01-2019 This petition was called on for hearing today.

CORAM :
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

For Petitioner(s) Mr. Shyam Divan, Sr. Adv.
Mr. Chander Uday Singh, Sr. Adv.
Mr. Pratap Venugopal, Adv.
Mr. Devidas Pangam, Adv.
Ms. Surekha Raman, AOR
Ms. Remya Raj, Adv.

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

Heard learned counsel for the petitioner and perused the relevant material.

We are not inclined to interfere with the order impugned in the special leave petition. The same is, accordingly, dismissed.

Signature Not Verified
Digitally signed by CHETAN KUMAR
Date: 2019.01.11 17:14:02 IST
Reason:

As the High Court has merely sought a report from the National Centre for Sustainable Coastal Management with regard to the High Tide Line, we do not see how the said direction of the High Court could have prejudiced the petitioner, inasmuch as it will always be open to the petitioner to urge its defence and take all points before the said authority at the time of consideration of the matter.

(Chetan Kumar)
A.R.-cum-P.S.

(Anand Prakash)
Court Master

Maria S.

IN THE HIGH COURT OF BOMBAY AT GOA

CONTEMPT PETITION NO.2 OF 2020

IN

P.I.L. WRIT PETITION NO.26 OF 2017

THE GOA FOUNDATION, THR. ITS SECRETARY, DR. CLAUDE ALVARES ... Petitioner.

Versus

PARIMAL RAI, OFFICE OF THE CHIEF SECRETARY AND 2 ANR. ... Respondents.

Ms. Norma Alvares *with* Mr. Om D'Costa, Advocates *for the Petitioner.*

Mr. S. D. Lotlikar, Senior Advocate *with* Mr. Deep D. Shirodkar, Additional Government Advocate *for the Respondent Nos.1 and 2.*

Mr. S.R. Rivankar, Senior Advocate *with* **Mr. R. G. Rivankar** *and* **Ms. Nishita S. Rivankar, Advocates** *for* **Rivankar, Advocate** *for the respondent No.3 in CP-2-2020.*

Mr. Rafique Dada, Senior Advocate *with* **Mr. Nitin D. Sardessai, Senior Advocate** *with* **Mr. Jitendra P. Supekar, Mr. Rishit Badani, Mr. Sufiyan Sayed, Mr. Shivam Fadte** *and* **Mr. Kabir Sabnis, Advocates** *for the original Respondent No.3 in PILWP-26-2017.*

WITH

MISC. CIVIL APPLICATION NO.64 OF 2020

IN

P.I.L. WRIT PETITION NO.26 OF 2017

GOA COASTAL ZONE MANAGEMENT

AUTHORITY, THR. ITS MEMBER SECRETARY ... Applicant.

Versus

THE GOA FOUNDATION, THR. ITS SECRETARY, DR. CLAUDE ALVARES ... Respondents.

Ms. Norma Alvares, *with* **Mr. Om D'Costa, Advocate** *for the Applicant.*

CORAM: A.K. MENON &
R.N. LADDHA, JJ.

DATED: 7th April 2022

P.C:

1. By this petition, the petitioner seeks to hold the respondents, the Chief Secretary, Government of Goa, Secretary(Environment), Government of Goa and the Member Secretary of the Goa Coastal Zone Management Authority in contempt of the judgment of this Court dated 24.08.2018 by which the Court issued detailed directions in paragraph 93 of the judgment as reproduced below for ease of reference:

> *"93. In view of the above discussions, we dispose of the Writ Petition by following directions :*
>
> *(I) The impugned decision of the GCZMA in the meeting dated 1 August 2017 accepting the Second Report and the Second Report filed by the GCZMA, are quashed and set aside;*

(II) (a) The Authorities shall, within three weeks from today, approach the National Centre for Sustainable Coastal Management, Chennai in respect of the paragraphs 37(i) of the Judgment and Order dated 29 June 2015 in Writ Petition No.333 of 1993;

(b) The NCSCM is requested to submit an estimate of costs to the Authorities within a period of three weeks from the date of receipt of the proposal from the Authorities

(c) After the estimate of costs is received from the NCSCM, the Authorities will forthwith call upon the Respondent No.3-Hotel to make payment of costs estimated by the NCSCM, directly to the NCSCM, within a period of three weeks.

(d) The NCSCM will carry out the exercise as indicated in paragraph 37(i) of the Judgment and Order dated 29 June 2015, within in a period of four months thereafter and prepare a report.

(e) It is open for the NCSCM to proceed to carry out the exercise without waiting for the tender of costs by the Respondent No.3-Hotel.

(f) After the exercise is so completed by the NCSCM, the Authorities, based on such conclusions arrived at by the NCSCM will take necessary action against the Respondent No.3-Hotel in respect of an area which is found to be in violation of the CRZ Notification of 1991, within a period of four weeks.

(g) The Authorities and the Respondent No.3 Hotel shall supply all the necessary documents and information to the NCSCM as and when required for the purpose of carrying out the exercise.

(h) Any violation of the above directions both, by the Authorities and the Respondent No.3-Hotel, will be viewed seriously and will be treated as a contempt of the order of this Court.

(i)The above directions shall be read along with the observations made by us in this Judgment.

(III) The Respondents-Authorities shall take necessary steps forthwith to ensure that the beach in question is made accessible to the general public."

2. Effectively, an independent report had to be obtained from the National Centre For Sustainable Coastal Management located in Chennai to make a detailed report on the action necessary to be taken in the facts and circumstances in the case. That report is now on record. It is the case of the petitioner that the report clearly observes that the structure put up by the third respondent-hotel in PIL Writ Petition No.26 of 2017 was in breach of the environmental laws and would require the hotel to demolish the offending structures.

3. It is not in dispute that of the three offending structures two have now been removed, i.e., the swimming pool and part of the hut located alongside the swimming pool. What has not been demolished is a wall on the beach side which was admittedly put up by the hotel. That structure is said to obstruct clear and easy access of the members of the public to and fro the beach front.

4. Having heard learned counsel for the parties at length, we find that in the affidavit in reply filed on behalf of the respondent no.1, a statement has been made by the Chief Secretary in paragraph 16 which is reproduced below for ease of reference:

> *"16. I, however, submit that in the event this Hon'ble Court comes to the conclusion that the retaining wall is liable to be demolished, notwithstanding what has been stated hereinabove, I shall ensure that the same is carried out as per the directions of the Court."*

5. The State is, therefore, of the clear view that in the event this Court finds that directions in Order dated 24.08.2018 passed in PIL Writ Petition no.26 of 2017 which, we find, is based on an earlier judgment dated 29.06.2015 in Writ Petition no.333 of 1993 are not complied with, it would mean that the retaining wall of the hotel is also

required to be demolished. The State is willing to do so being conscious of the import of the aforesaid Order.

6. In our view, if we accept that position and having heard the learned counsel for the parties and despite having examined the various reports filed on behalf of the Goa Coastal Zone Management Authority, it would be necessary to hear the respondent no.3 in PIL Writ Petition no.26 of 2017. The respondent no.3 is not a party to this petition. Although Mr. Dada, learned counsel appears on their behalf, he submits that he has not been able to make his submissions in response to detailed submissions made by the parties today. At this stage, Ms. Alvares, learned counsel seeks leave to file additional affidavit placing on record photographic evidence as available on date of alleged violation which is allegedly continuing.

7. After considering the record placed before this Court, we direct as follows:

(i) The original respondent no.3 in PIL Writ Petition no.26 of 2017 now known as *V.M. Salgaonkar Corporation Pvt. Ltd.,* shall be impleaded in the Contempt Petition.

(ii) Amendment to be carried out within one week. Re-verification is dispensed with. Copies of this petition after amendment shall be served forthwith upon the said respondent. Needless to mention that copies of the entire set of proceedings in this Petition shall be furnished to the newly added respondent at their cost.

(iii) The newly added respondent is permitted to file a reply, if so advised, within a period of two weeks of the amended copy being served upon the said respondent.

(iv) Rejoinder, if any, to be filed within one week thereafter.

(v) Leave is granted to Petitioner to file such additional affidavit within 2 weeks from today.

8. List the matter on 16th June, 2022.

R. N. LADDHA, J. **A.K. MENON, J.**

MARIA SUZANA REBELLO Digitally signed by MARIA SUZANA REBELLO Date: 2022.04.08 16:37:19 +05'30'

IN THE HIGH COURT OF BOMBAY AT GOA

MISC.CIVIL APPLICATION NO. 503 OF 2017
IN
MISC.CIVIL APPLICATION NO. 224 OF 2017

GOA COASTAL ZONE MANAGEMENT AUTHORITY., ... Applicant

Versus

THE GOA FOUNDATION THR. ITS SECRETARY, DR CLAUDE ALVARES., ... Respondent

Shri Dattaprasad Lawande, Advocate General with Ms. P. Bhandari, Additional Government Advocate for the applicant / original respondent no.3.

Ms. Norma Alvares, learned Advocate for the respondents / original petitioners.

Shri D. J. Pangam, learned Advocate for the original respondents.

Coram:- F. M. REIS &
NUTAN D. SARDESSAI, JJ.

Date:- 3rd July, 2017

P.C.:

Heard Shri Dattaprasad Lawande, learned Advocte General for the applicant / original respondent no.3, Ms. Norma Alvares, learned Advocate for respondents / original petitioners and Shri D. J. Pangam, learned Advocate for the original respondents.

2. This is an application for extension of time for the compliance of the directions issued by this Court while disposing of Writ Petition No.333 of 1993 by Judgment dated 29/06/2015. Ms Norma Alvares, learned Counsel appearing for the

respondents/ original petitioners strongly opposes the said extension of time inter alia on the ground that while disposing of an application for extension of time by order dated 03/04/2017, it was clearly mentioned that time was extended by six weeks as last chance. It is further pointed out that though during the said period the joint inspection was carried out wherein the representative of the petitioner was also present, the matter was deferred as the DSLR was present without the requisite instruments. It is further pointed out that the original respondent/ applicant herein have disobeyed the directions of this Court and as such no further extension deserves to be granted in the above application.

3. Learned Advocate General submits that though the applicants desired to comply with the directions of this Court, nevertheless according to him as the Member Secretary of GCZMA was on election duty such exercise was delayed. He further pointed out that all measures will be taken to ensure that the directions would be complied with on or before 16/07/2017. It is further submitted that the delay was not intentional and as such time be extended accordingly.

4. We have considered the rival contentions and also gone through the records of the original Judgment which was passed somewhere in 2015. We are not satisfied with the reasons given

from time to time for extension of time. But however considering the peculiar facts and circumstances of the case we grant a final extension to comply with the directions issued in the said Judgment dated 29/06/2015 while disposing off the above Writ Petition upto 12/07/2017.

5. Needless to say, the Chief Secretary and Secretary of the Concerned Department to ensure that such directions are complied with within the time granted, after giving a notice of inspection to the petitioner / concerned parties in terms of the earlier order. Copy of the report be furnished to the petitioner within one week thereafter and file the same in this Court.

6. Parties to act on the authenticated copy.

NUTAN D. SARDESSAI, J. F. M. REIS, J.

mv

ANNEXURE 10 COLLY

GOA FOUNDATION

G-8, St Britto's Apartments, Feira Alta, Mapusa 403507 Goa, INDIA
Telephone: +91-9067176274
E-mail: goafoundation@gmail.com *Website:* www.goafoundation.org

Dated: 20.10.2022

To:
The Registrar,
Bombay High Court at Goa,
Porvorim, Bardez, Goa.

Subj: Compliance with judgment dated 30.09.2022 of the Bombay High Court at Goa in CP No.2/2020

Dear Sir,

I am enclosing a demand draft for Rs.50,000 drawn in the name of the "Goa State Legal Services Authority Cost Fund," as per the direction given by the Hon'ble Court in its judgment dated 30.09.2022 in CP No.2/2020.

This amount is being paid due to the fact that a time limitation has been imposed for payment of the amount. The payment, however, is made without prejudice to the rights of the Goa Foundation to challenge the order in appeal.

Yours faithfully,

GOA STATE LEGAL SERVICES AUTHORITY PORVORIM - GOA

Rcd
21/10/2022

Dr Claude Alvares
Director

Encl: DD for Rs.50,000 as above.

FORM

G. A. R. 5

[*See* Rule 22(*i*)]

RECEIPT

0 3631

No. 21/10/2022

Received from Dr. Claude Alvares

with Letter No. .....

dated ..... 20 ..... the sum of Rs. 50,000/-

(Rupees Fifty thousand only

.....)

in cash/by cheque/by Bank draft on account of cost as Per order dtd. 30/09/2022 in C.P. No 2/2020 in payment of DD. No 932211 dtd 20/10/2022 drawn on Union Bank, Mapusa

GOA STATE LEGAL SERVICES AUTHORITY * PORVORIM - GOA *

Signature

Rs. 50,000/-

Designation

Govt. Ptg. Press, Panaji-Goa — S/61/3,000 Bks. — 12/2013.

ANNEXURE 11

IN THE HON'BLE HIGH COURT OF JUDICATURE OF BOMBAY AT PORVORIM, GOA.

Civil Review Application No._____/2023

***in* Contempt Petition No.2/2020**

***in* P.I.L. W.P. No.26/2017**

The Goa Foundation ....**APPLICANT**

v/s.

Shri Parimal Rai & Ors. ...**RESPONDENTS**

CERTIFICATE IN SUPPORT OF REVIEW APPLICATION

I, Norma Alvares, Advocate for the 'Goa Foundation', above named Review Applicant herein, do hereby certify, in my judgment, that the grounds of review in the Application presented by me on behalf of the said Applicant are good grounds of review.

Dated this the 12th day of June 2023,

Advocate for the Applicant.